Y 4.J 89/1 : 103/50

NATIONAL CHILD PROTECTION ACT OF 1993

HEARING

BEFORE THE

SUBCOMMITTEE ON
CIVIL AND CONSTITUTIONAL RIGHTS

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

ON

H.R. 1237

NATIONAL CHILD PROTECTION ACT OF 1993

JULY 16, 1993

Serial No. 50

BOSTON PUBLIC LIBRARY
GOVERNMENT DOCUMENTS DEPARTMENT

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE
80-609 CC WASHINGTON : 1994

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-046185-5

Y 4. J 89/1 : 103/50

NATIONAL CHILD PROTECTION ACT OF 1993

HEARING

BEFORE THE

SUBCOMMITTEE ON
CIVIL AND CONSTITUTIONAL RIGHTS

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

ON

H.R. 1237

NATIONAL CHILD PROTECTION ACT OF 1993

JULY 16, 1993

Serial No. 50

BOSTON PUBLIC LIBRARY
GOVERNMENT DOCUMENTS DEPARTMENT

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE
80-609 CC WASHINGTON : 1994

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-046185-5

COMMITTEE ON THE JUDICIARY

JACK BROOKS, Texas, *Chairman*

DON EDWARDS, California
JOHN CONYERS, JR., Michigan
ROMANO L. MAZZOLI, Kentucky
WILLIAM J. HUGHES, New Jersey
MIKE SYNAR, Oklahoma
PATRICIA SCHROEDER, Colorado
DAN GLICKMAN, Kansas
BARNEY FRANK, Massachusetts
CHARLES E. SCHUMER, New York
HOWARD L. BERMAN, California
RICK BOUCHER, Virginia
JOHN BRYANT, Texas
GEORGE E. SANGMEISTER, Illinois
CRAIG A. WASHINGTON, Texas
JACK REED, Rhode Island
JERROLD NADLER, New York
ROBERT C. SCOTT, Virginia
DAVID MANN, Ohio
MELVIN L. WATT, North Carolina
XAVIER BECERRA, California

HAMILTON FISH, JR., New York
CARLOS J. MOORHEAD, California
HENRY J. HYDE, Illinois
F. JAMES SENSENBRENNER, JR., Wisconsin
BILL McCOLLUM, Florida
GEORGE W. GEKAS, Pennsylvania
HOWARD COBLE, North Carolina
LAMAR S. SMITH, Texas
STEVEN SCHIFF, New Mexico
JIM RAMSTAD, Minnesota
ELTON GALLEGLY, California
CHARLES T. CANADY, Florida
BOB INGLIS, South Carolina
BOB GOODLATTE, Virginia

JONATHAN R. YAROWSKY, *General Counsel*
ALAN F. COFFEY, JR., *Minority Chief Counsel*

SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS

DON EDWARDS, California, *Chairman*

PATRICIA SCHROEDER, Colorado
BARNEY FRANK, Massachusetts
CRAIG A. WASHINGTON, Texas
JERROLD NADLER, New York

HENRY J. HYDE, Illinois
HOWARD COBLE, North Carolina
CHARLES T. CANADY, Florida

CATHERINE LEROY, *Counsel*
IVY DAVIS-FOX, *Assistant Counsel*
JAMES X. DEMPSEY, *Assistant Counsel*
VIRGINIA SLOAN, *Assistant Counsel*
MELODY BARNES, *Assistant Counsel*
KATHRYN A. HAZEEM, *Minority Counsel*

CONTENTS

HEARING DATE

Page

July 16, 1993 1

TEXT OF BILL

H.R. 1237 3

OPENING STATEMENT

Edwards, Hon. Don, a Representative in Congress from the State of California, and chairman, Subcommittee on Civil and Constitutional Rights 1

WITNESSES

Handley, Col. Thomas A., legal counsel, Civil Air Patrol 66
Miles-LaGrange, Vicki, senator, Oklahoma State Legislature, and chair, Oklahoma Senate Judiciary Committee, on behalf of the National Conference of State Legislatures 29
Nemecek, David F. Inspector, Deputy Assistant Director, Policy and Liaison Branch, Criminal Justice Information Services Division, FBI 21
Potts, Lawrence F., director of Administration, Boy Scouts of America 54
Swann, Lynn C., president of the board, Big Brothers/Big Sisters of America .. 48
Williams, Renova, director of personnel, Civil Air Patrol, Maxwell Air Force Base, Montgomery, AL 70

LETTERS, STATEMENTS, ETC., SUBMITTED FOR THE HEARING

Handley, Col. Thomas A., legal counsel, Civil Air Patrol: Prepared statement . 67
Miles-LaGrange, senator, Oklahoma State Legislature, and chair, Oklahoma Senate Judiciary Committee, on behalf of the National Conference of State Legislatures: .....
Prepared statement 38
State criminal history background check laws (through December 31, 1992) 31
Nemecek, David F., Inspector, Deputy Assistant Director, Policy and Liaison Branch, Criminal Justice Information Services Division, FBI 24
Potts, Lawrence F., director of administration, Boy Scouts of America: Prepared statement 56
Schroeder, Hon. Patricia, a Representative in Congress from the State of Colorado: Prepared statement: 30
Swann, Lynn C., president of the board, Big Brothers/Big Sisters of America: Prepared statement 50

APPENDIX

Material submitted for the hearing 75

NATIONAL CHILD PROTECTION ACT OF 1993

FRIDAY, JULY 16, 1993

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2237, Rayburn House Office Building, Hon. Don Edwards (chairman of the subcommittee) presiding.

Present: Representatives Don Edwards, Patricia Schroeder, and Charles T. Canady.

Also present: James X. Dempsey, assistant counsel; Jancelyn Pegues, secretary; and Kathryn A. Hazeem, minority counsel.

OPENING STATEMENT OF CHAIRMAN EDWARDS

Mr. EDWARDS. The subcommittee will come to order.

The purpose of this subcommittee meeting today is to examine H.R. 1237, a bill to establish procedures for national criminal background checks for child care providers. We have invited a number of expert witnesses and we are looking forward to hearing from them.

We are indebted to our colleague from Colorado, Mrs. Schroeder for being the original author of this legislation. Mrs. Schroeder has long been one of the Nation's strongest advocates for the welfare of children and we are very grateful for the leadership that she has offered on this bill.

The bill before us strives for a balance, since the use of criminal history records for employment screening purposes raises important issues of fairness and due process.

The FBI's criminal history records files have over 24 million individual names and records, and that is a significant portion, of course, of the work force. These records are far from perfect. The most serious problem is that as many as 40 to 60 percent of the records don't have dispositions, and dispositions are really essential for an accurate criminal record because you don't know if the person was found innocent or guilty.

Someday I trust that we will resolve that very serious problem. Meanwhile, we must consider whether the FBI should provide to employers and licensing authorities naked arrest records when that person might have been innocent? That always has been of concern to the subcommittee.

As a matter of fact, we used to have a 1-year rule with the FBI: if after a year, if there was not a disposition, the record could not be distributed. We will ask about Mr. Nemecek about that.

A second area of concern involves the impact of arrest record checks on the poor and on minorities who are disproportionately subject to arrests. Should a person be denied employment throughout his life based on an arrest many, many years ago? That is another issue that we should be discussing.

A third problem is the delay involved in getting a response from the FBI. The FBI, in many cases, still uses the mail, and sometimes getting a record takes 2 months or more.

With all these issues in mind, we are looking forward to all the witnesses who are going to help us write this bill again. It passed the House last year, it was in the crime bill that passed the Senate but the conference report was unfortunately filibustered to death in the other body.

This year, we hope to have it in the crime bill but if we don't, we are going to do it freestanding.

[The bill, H.R. 1237, follows:]

I

103D CONGRESS
1ST SESSION

H. R. 1237

To establish procedures for national criminal background checks for child care providers.

IN THE HOUSE OF REPRESENTATIVES

MARCH 4, 1993

Mrs. SCHROEDER (for herself, Mr. EDWARDS of California, Mr. CRAMER, Mr. KOPETSKI, Mr. RAMSTAD, Mr. SHAYS, and Mr. SMITH of Oregon) introduced the following bill; which was referred to the Committee on the Judiciary

---

A BILL

To establish procedures for national criminal background checks for child care providers.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Child Protection Act of 1993".

SEC. 2. REPORTING BY THE STATES.

(a) IN GENERAL.—An authorized criminal justice agency of a State shall report child abuse crime informa-

tion to, or index child abuse crime information in, the national criminal background check system.

(b) PROVISION OF STATE CHILD ABUSE CRIME RECORDS THROUGH THE NATIONAL CRIMINAL BACKGROUND CHECK SYSTEM.—(1) Not later than 180 days after the date of enactment of this Act, the Attorney General shall—

(A) investigate the criminal records of each State and determine for each State a timetable by which the State should be able to provide child abuse crime records on an on-line capacity basis through the national criminal background check system;

(B) establish guidelines for the reporting or indexing of child abuse crime information, including guidelines relating to the format, content, and accuracy of child abuse crime information and other procedures for carrying out this Act; and

(C) notify each State of the determinations made pursuant to subparagraphs (A) and (B).

(2) The Attorney General shall require as a part of the State timetable that the State—

(A) by not later than the date that is 3 years after the date of enactment of this Act, have in a computerized criminal history file at least 80 percent

of the final dispositions that have been rendered in all identifiable child abuse crime cases in which there has been an event of activity within the last 5 years;

(B) continue to maintain at least an 80 percent reporting rate of final case dispositions in all identifiable child abuse crime cases in which there has been an event of activity within the preceding 5 years; and

(C) take steps to achieve full disposition reporting, including data quality audits and periodic notices to criminal justice agencies identifying records that lack final dispositions and requesting those dispositions.

(c) LIAISON.—An authorized agency of a State shall maintain close liaison with the National Center on Child Abuse and Neglect, the National Center for Missing and Exploited Children, and the National Center for the Prosecution of Child Abuse for the exchange of technical assistance in cases of child abuse.

(d) ANNUAL SUMMARY.—(1) The Attorney General shall publish an annual statistical summary of the child abuse crime information reported under this Act.

(2) The annual statistical summary described in paragraph (1) shall not contain any information that may

reveal the identity of any particular victim or alleged violator.

(e) ANNUAL REPORT.—The Attorney General shall publish an annual summary of each State's progress in reporting child abuse crime information to the national criminal background check system.

(f) STUDY OF CHILD ABUSE OFFENDERS.—(1) Not later than 180 days after the date of enactment of this Act, the Administrator of the Office of Juvenile Justice and Delinquency Prevention shall begin a study based on a statistically significant sample of convicted child abuse offenders and other relevant information to determine—

(A) the percentage of convicted child abuse offenders who have more than 1 conviction for an offense involving child abuse;

(B) the percentage of convicted child abuse offenders who have been convicted of an offense involving child abuse in more than 1 State;

(C) whether there are crimes or classes of crimes, in addition to those defined as background check crimes in section 5, that are indicative of a potential to abuse children; and

(D) the extent to which and the manner in which instances of child abuse form a basis for convictions for crimes other than child abuse crimes.

(2) Not later than 1 year after the date of enactment of this Act, the Administrator shall submit a report to the Chairman of the Committee on the Judiciary of the Senate and the Chairman of the Committee on the Judiciary of the House of Representatives containing a description of and a summary of the results of the study conducted pursuant to paragraph (1).

SEC. 3. BACKGROUND CHECKS.

(a) IN GENERAL.—(1) A State may have in effect procedures (established by or under State statute or regulation) to permit a qualified entity to contact an authorized agency of the State to request a nationwide background check for the purpose of determining whether there is a report that a provider has been convicted of a background check crime.

(2) The authorized agency shall access and review State and Federal records of background check crimes through the national criminal background check system and shall respond promptly to the inquiry.

(b) GUIDELINES.—(1) The Attorney General shall establish guidelines for State background check procedures established under subsection (a), which guidelines shall include the requirements and protections of this Act.

(2) The guidelines established under paragraph (1) shall require—

(A) that no qualified entity may request a background check of a provider under subsection (a) unless the provider first provides a set of fingerprints and completes and signs a statement that—

(i) contains the name, address, and date of birth appearing on a valid identification document (as defined by section 1028(d)(1) of title 18, United States Code) of the provider;

(ii) the provider has not been convicted of a background check crime and, if the provider has been convicted of a background check crime, contains a description of the crime and the particulars of the conviction;

(iii) notifies the provider that the entity may request a background check under subsection (a);

(iv) notifies the provider of the provider's rights under subparagraph (B); and

(v) notifies the provider that prior to the receipt of the results of the background check the qualified entity may choose to deny the provider unsupervised access to a child to whom the qualified entity provides child care;

(B) that each State establish procedures under which a provider who is the subject of a background check under subsection (a) is entitled—

(i) to obtain a copy of any background check report and any record that forms the basis for any such report; and

(ii) to challenge the accuracy and completeness of any information contained in any such report or record and obtain a prompt determination from an authorized agency as to the validity of such challenge;

(C) that an authorized agency to which a qualified entity has provided notice pursuant to subsection (a) make reasonable efforts to complete research in whatever State and local recordkeeping systems are available and in the national criminal background check system and respond to the qualified entity within 15 business days;

(D) that the response of an authorized agency to an inquiry pursuant to subsection (a) inform the qualified entity that the background check pursuant to this section—

(i) may not reflect all convictions for a background check crime; and

(ii) may not be the sole basis for determining the fitness of a provider;

(E) that the response of an authorized agency to an inquiry pursuant to subsection (a) be limited to the conviction information reasonably required to accomplish the purposes of this Act;

(F) that the qualified entity may choose to deny the provider unsupervised access to a child to whom the qualified entity provides child care on the basis of conviction information provided pursuant to a background check under subsection (a) until the provider has obtained a determination as to the validity of any challenge under subparagraph (B) or waived the right to make such challenge; and

(G) that each State establish procedures to ensure that any background check under subsection (a) and the results thereof shall be requested by and provided only to—

(i) qualified entities identified by States;

(ii) authorized representatives of a qualified entity who have a need to know such information;

(iii) the provider who is the subject of a background check;

(iv) law enforcement authorities; or

(v) pursuant to the direction of a court of law;

(H) that background check information conveyed to a qualified entity pursuant to subsection (a) shall not be conveyed to any person except as provided under subparagraph (G); and

(I) that a State or Federal employee or an employee of a political subdivision of a State responsible for providing information to the national criminal background check system shall not be liable in an action at law for damages for failure to prevent a qualified entity from taking action adverse to a provider on the basis of a criminal background check.

(c) EQUIVALENT PROCEDURES.—(1) Notwithstanding anything to the contrary in this section, the Attorney General may certify that a State licensing or certification procedure that differs from the procedures described in subsections (a) and (b) shall be deemed to be the equivalent of such procedures for purposes of this Act, but the procedures described in subsections (a) and (b) shall continue to apply to those qualified entities, providers, and background check crimes that are not governed by or included within the State licensing or certification procedure.

(2) The Attorney General shall by regulation establish criteria for certifications under this subsection. Such criteria shall include a finding by the Attorney General that the State licensing or certification procedure accomplishes the purposes of this Act and incorporates a nationwide review of State and Federal records of background check offenses through the national criminal background check system.

(d) REGULATIONS.—(1) The Attorney General may by regulation prescribe such other measures as may be required to carry out the purposes of this Act, including measures relating to the security, confidentiality, accuracy, use, misuse, and dissemination of information, and audits and recordkeeping.

(2) The Attorney General shall, to the maximum extent possible, encourage the use of the best technology available in conducting background checks.

SEC. 4. FUNDING FOR IMPROVEMENT OF CHILD ABUSE CRIME INFORMATION.

(a) USE OF FORMULA GRANTS FOR IMPROVEMENTS IN STATE RECORDS AND SYSTEMS.—Section 509(b) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3759(b)) is amended—

(1) in paragraph (2) by striking "and" after the semicolon;

(2) in paragraph (3) by striking the period and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(4) the improvement of State record systems and the sharing of all of the records described in paragraphs (1), (2), and (3) and the records required under section 2 of the National Child Protection Act of 1993 with the Attorney General for the purpose of implementing the National Child Protection Act of 1993.".

(b) ADDITIONAL FUNDING GRANTS FOR THE IMPROVEMENT OF CHILD ABUSE CRIME INFORMATION.—(1) The Attorney General shall, subject to appropriations and with preference to States that, as of the date of enactment of this Act, have in computerized criminal history files the lowest percentage of dispositions of identifiable child abuse cases, make a grant to each State to be used—

(A) for the computerization of criminal history files for the purposes of this Act;

(B) for the improvement of existing computerized criminal history files for the purposes of this Act;

(C) to improve accessibility to the national criminal background check system for the purposes of this Act; and

(D) to assist the State in the transmittal of criminal records to, or the indexing of criminal history record in, the national criminal background check system for the purposes of this Act.

(2) There are authorized to be appropriated for grants under paragraph (1) a total of $20,000,000 for fiscal years 1994, 1995, and 1996.

(c) WITHHOLDING STATE FUNDS.—Effective 1 year after the date of enactment of this Act, the Attorney General may reduce, by up to 10 percent, the allocation to a State for a fiscal year under title I of the Omnibus Crime Control and Safe Streets Act of 1968 that is not in compliance with the timetable established for that State under section 2 of this Act.

SEC. 5. DEFINITIONS.

For the purposes of this Act—

(1) the term "authorized agency" means a division or office of a State designated by a State to report, receive, or disseminate information under this Act;

(2) the term "background check crime" means a child abuse crime, murder, manslaughter, aggra-

vated assault, kidnapping, arson, sexual assault, domestic violence, incest, indecent exposure, prostitution, promotion of prostitution, and a felony offense involving the use or distribution of a controlled substance;

(3) the term "child" means a person who is a child for purposes of the criminal child abuse law of a State;

(4) the term "child abuse" means the physical or mental injury, sexual abuse or exploitation, neglectful treatment, negligent treatment, or maltreatment of a child by any person in violation of the criminal child abuse laws of a State, but does not include discipline administered by a parent or legal guardian to his or her child provided it is reasonable in manner and moderate in degree and otherwise does not constitute cruelty;

(5) the term "child abuse crime" means a crime committed under any law of a State that establishes criminal penalties for the commission of child abuse by a parent or other family member of a child or by any other person;

(6) the term "child abuse crime information" means the following facts concerning a person who is under indictment for, or has been convicted of, a

child abuse crime: full name, race, sex, date of birth, height, weight, fingerprints, a brief description of the child abuse crime or offenses for which the person has been arrested or is under indictment or has been convicted, the disposition of the charge, and any other information that the Attorney General determines may be useful in identifying persons arrested for, under indictment for, or convicted of, a child abuse crime;

(7) the term "child care" means the provision of care, treatment, education, training, instruction, supervision, or recreation to children;

(8) the term "domestic violence" means a felony or misdemeanor involving the use or threatened use of force by—

(A) a present or former spouse of the victim;

(B) a person with whom the victim shares a child in common;

(C) a person who is cohabiting with or has cohabited with the victim as a spouse; or

(D) any person defined as a spouse of the victim under the domestic or family violence laws of a State;

(9) the term "exploitation" means child pornography and child prostitution;

(10) the term "mental injury" means harm to a child's psychological or intellectual functioning, which may be exhibited by severe anxiety, depression, withdrawal or outward aggressive behavior, or a combination of those behaviors or by a change in behavior, emotional response, or cognition;

(11) the term "national criminal background check system" means the criminal history record system maintained by the Federal Bureau of Investigation based on fingerprint identification or any other method of positive identification;

(12) the term "negligent treatment" means the failure to provide, for a reason other than poverty, adequate food, clothing, shelter, or medical care so as to seriously endanger the physical health of a child;

(13) the term "physical injury" includes lacerations, fractured bones, burns, internal injuries, severe bruising, and serious bodily harm;

(14) the term "provider" means

(A) a person who—

(i) is employed by or volunteers with a qualified entity;

(ii) who owns or operates a qualified entity; or

(iii) who has or may have unsupervised access to a child to whom the qualified entity provides child care; and

(B) a person who—

(i) seeks to be employed by or volunteer with a qualified entity;

(ii) seeks to own or operate a qualified entity; or

(iii) seeks to have or may have unsupervised access to a child to whom the qualified entity provides child care;

(15) the term "qualified entity" means a business or organization, whether public, private, for-profit, not-for-profit, or voluntary, that provides child care or child care placement services, including a business or organization that licenses or certifies others to provide child care or child care placement services;

(16) the term "sex crime" means an act of sexual abuse that is a criminal act;

(17) the term "sexual abuse" includes the employment, use, persuasion, inducement, enticement, or coercion of a child to engage in, or assist another

person to engage in, sexually explicit conduct or the rape, molestation, prostitution, or other form of sexual exploitation of children or incest with children; and

(18) the term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territories of the Pacific.

20

Mr. EDWARDS. I yield to the gentlewoman from Colorado, Mrs. Schroeder.

Mrs. SCHROEDER. Thank you very much, Mr. Chairman. I think you are underplaying your very active role in helping us draft this bill. We thank you so much for helping us.

The original cosponsors of the bill are delighted that this hearing has been scheduled because this is something we have been trying to get through here forever, and I think it is long overdue.

The National Child Protection Act of 1993 is what we are talking about today. It is something that Oprah Winfrey has dedicated her energy and talents to. The bottom line is it is incredible in this country that with all the technology, with all the ways that we could streamline communication between States, that we have still not done this vis-a-vis protecting children from people who have moved across jurisdictions and continue to interface with kids.

What this legislation basically does is to provide grants to States to improve their reporting to the national crime reporting system that provides the data on convicted child abusers. That is very important. Then States will be able to access this data base to finish background checks on anyone who is going to be a child care provider or a volunteer in youth service organizations.

I have always been amazed, I think all the cosponsors have been amazed, that we seem to care much more about cars than we do kids in this country. We have much better information systems about stolen cars, about all of those types of issues around automobiles, than we do children.

This bill would authorize $20 million in direct Federal assistance to help States improve the reporting of their criminal justice records. I think that the issues that the chairman brought up are very important. We obviously want to make sure these records are valid and that they are not prejudging people. But once we have found someone convicted, we want them on the record so that people can find this out.

I thank you so much for moving on this. I am anxious to hear the witnesses today. I am going to ask unanimous consent to put the rest of my statement in the record, Mr. Chairman. And thank you once more sincerely for your help and the staff's help and everyone else's in bringing this to the forefront today.

Mr. EDWARDS. Without objection, the gentlewoman's statement will be made part of the record in full.

[The prepared statement of Mrs. Schroeder follows:]

PREPARED STATEMENT OF HON. PATRICIA SCHROEDER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO

Mr. Chairman, thank you for holding this hearing today and for your support throughout the development of this bill. On March 4, you and I along with Representatives Bud Cramer, Michael Kopetski, Jim Ramstad, Bob Smith, and Chris Shays introduced the National Child Protection Act of 1993. This bill is designed to protect children from being abused and victimized when they are in child care or involved in youth activities outside their homes.

I want to thank the original cosponsors as well as the other additional cosponsors of this legislation for their commitment to ensuring the safety of our nation's most vulnerable children. I also want to thank the many groups that have responded so positively to the legislation and have provided valuable input.

A very special thanks to Ms. Oprah Winfrey who has dedicated her energy and talents to focusing the spotlight of public attention on the issue of child abuse and this issue in particular.

21

I also want to thank the members and staff of the former House Select Committee on Children, Youth, and Families. Their hard work on this issue and the issue of child abuse will be sorely missed by Congress.

This legislation will provide grants to states to improve their reporting to the national crime reporting system by providing data on convicted child abusers. States will be able to access the data base to complete background checks on potential and current child care providers and volunteers with youth service organizations. Having access to this data will prevent persons convicted of child abuse crimes from being hired in these settings.

The bill authorizes $20 million in direct Federal assistance to help states to improve the reporting of their criminal justice records. The legislation includes specific timetables so that accurate, up-to-date information on child abuse convictions will be available on a national basis within three years. The bill contains safeguards to ensure that information provided is accurate, current, and includes only convictions of abuse.

Child care providers and youth-serving organizations will be able to conduct background checks on current or potential employees or volunteers by making applications with the appropriate state agency. The cost of the background check will be borne by the employer or organization.

I'm anxious to hear our witnesses today and to swiftly report out this bill so the full House can pass it.

Mr. EDWARDS. The ranking minority member, Mr. Henry Hyde of Illinois, deeply regrets that a prior appointment will not allow him to be here today. Mr. Hyde has always been of great help in legislation like this and I know he is sorry that he is not here.

The gentleman from Florida, Mr. Canady.

Mr. CANADY. Thank you, Mr. Chairman. I would like to join in thanking you for calling this hearing today. This is an important issue and deserves the consideration of this committee.

I appreciate each of the witnesses taking their time to be with us and I am looking forward to hearing what they have to say. This is a somewhat complex issue and I think it deserves our serious consideration.

We need to look at all aspects of it to make sure we come up with a workable solution that will provide the information we need in a cost-effective manner.

Thank you, Mr. Chairman.

Mr. EDWARDS. Thank you, Mr. Canady.

Our first witnesses is David F. Nemecek who has been a friend and adviser to the subcommittee for many years and we have worked very closely with Mr. Nemecek. He is the Deputy Assistant Director in charge of the Policy and Liaison Branch of the Criminal Justice Information Services Division of the FBI.

Welcome.

Without objection, your full statement will be made part of the record. If you could summarize your statement, we would appreciate it.

STATEMENT OF DAVID F. NEMECEK, INSPECTOR, DEPUTY ASSISTANT DIRECTOR, POLICY AND LIAISON BRANCH, CRIMINAL JUSTICE INFORMATION SERVICES DIVISION, FBI

Mr. NEMECEK. Thank you very much, Mr. Chairman, other Members, staff. It is a pleasure for me to be here again today and to make some brief comments regarding this particular issue.

With regard to H.R. 1237, the National Child Protection Act, let me first state unequivocally that the administration strongly supports the goals of this act, protection of this Nation's children from

abuse. Nothing is more important than the well-being of our most precious national resource, our children.

The FBI and the Department of Justice are committed to the successful implementation of legislation which addresses this problem.

My testimony today will address your bill from the perspective of the FBI. As you indicated, I represent the new CJIS Division. This Division is particularly affected by any legislation which involves access to documented criminal information, whether the information is to identify fugitives or criminal history records. This Division is now responsible for managing all of these information services. These include the National Crime Information Center, known as NCIC, the uniform crime reporting system, which is our statistical system, and the fingerprint-based criminal history record system.

NCIC is the online system accessed by police officers typically throughout the United States when a citizen is contacted on the street. NCIC provides information on fugitives, missing children and stolen property such as motor vehicles.

The interstate identification index, known as III, which is accessed through the NCIC system, is an automated criminal history record system that can be inquired upon based upon name and numeric identifier. A III response provides arrest and disposition information, originating from State records in 24 States, and these are known as participating States.

The rest of the criminal history record information now comes from the FBI, until such time as these States are in a technical position to provide their records. Due to the laws of many of the 24 participating States which restrict dissemination of criminal history records, the III system is currently reserved only for criminal justice agencies for criminal justice purposes and for certain Federal agencies with national security responsibilities for narrowly defined national security purposes.

Perhaps most important to my discussion of 1237 is access to FBI-maintained fingerprint records. These records consist of fingerprint records, personal identification information, such as date of birth and physical descriptors, and listings of the subject's arrest and disposition of these arrests.

These records are currently accessed by manual submission, that is through the mail, by submitting all fingerprints for criminal justice and noncriminal justice purposes as covered by applicable Federal and State laws.

We are in the process of upgrading all of these systems. With the support of this committee and Congress, we are in the process of creating a new automated system called the integrated automated fingerprint identification system, known as IAFIS, and this will be completed in 1998.

This will support automated submission of 10-print fingerprint cards for all criminal and noncriminal justice purposes. This will permit online searching, and what that means is a very timely inquiry to determine identification, as well as to retrieve criminal history records.

This will greatly increase the speed and efficiency of noncriminal justice background screening, possibly reducing the turnaround

time from the current average of 2 weeks to 2 hours, or up to 24 hours.

Many Federal and State agencies now access this data base for many of the purposes covered by 1237. Thirty-one States and the District of Columbia have enacted statutes that require criminal history screening for some category of child care providers. This screening is currently accomplished through submission of fingerprints to the FBI, channeled through the State Identification Bureau.

In addition, the Comprehensive Crime Control Act of 1990 requires criminal history screening for employees of federally run child care centers. Effectiveness of screening via these provisions is currently being evaluated by the Inspector General of the Department of Health and Human Services.

Child care provider criminal history background screening is currently accomplished by providing the complete criminal history record to a Federal, State or local agency. These private child care providers do not receive access to an applicant's criminal history information. That is, there is a screening or regulating agency at the State level.

This system has tangible benefits. First, use of licensing or screening agencies ensures uniform application of standards with respect to whether certain criminal records disqualify an applicant for employment. Second, control of the information, which is generally sensitive and not for general dissemination, is greater with governmental agencies.

Centralization of the screening function provides an easily accessible point for auditing of access to and dissemination of sensitive record information. This is an issue to which the FBI is particularly sensitive. Protection of criminal history records has proven to be difficult, especially without the existence of complete Federal criminal sanctions against unauthorized possession and/or dissemination of such information.

One of the strengths of H.R. 1237 is its recognition of the importance of fingerprints to the screening process as the only existing method of positive identification. This proposal appropriately requires criminal history screening by fingerprint submissions and therefore will avoid misidentification. The FBI continues to support and urge the use of fingerprint identification in all history record screening systems.

Several other technical points should also be highlighted. Section 3(b)(E) limits the information that can be disseminated to authorized recipients to "convictions." FBI criminal history records to a large extent are not complete with respect to disposition of arrests.

Additionally, State criminal records are often not complete or fully automated, making access as required by 1237 difficult, if not impossible, without significant updating and improvement of many State systems. H.R. 1237 contains some funding authorizations for these purposes similar to funding provided in previous handgun purchaser screening legislation.

Much of the burden of legislation which involves access to criminal history records falls on State record systems. These burdens include minimum standards for disposition reporting which must be met within specific time periods, subject to funding cuts if not met.

It is likely that many States will face such reductions absent significant Federal funding.

I would also note that currently Congress has authorized the FBI to charge fees for noncriminal justice access to our record system. These fees are necessary to maintain the system given the additional burden that employment and licensing screening creates.

We read nothing in H.R. 1237 that abrogates this authorization for screening requests under its provisions and believe such fees to be appropriate given the interests of both the Federal Government and States in fairly apportioning the cost of the system.

In closing, the FBI, Department of Justice and the administration strongly support the goals of this legislation and look forward to continued cooperation with your subcommittee in your efforts to address this important problem.

Thank you, Mr. Chairman.

Mr. EDWARDS. Thank you.

[The prepared statement of Mr. Nemecek follows:]

PREPARED STATEMENT OF DAVID F. NEMECEK, INSPECTOR, DEPUTY ASSISTANT DIRECTOR, POLICY AND LIAISON BRANCH, CRIMINAL JUSTICE INFORMATION SERVICES DIVISION, FBI

Mr. Chairman, and members of the Subcommittee, I appreciate the opportunity to appear before you today to discuss H.R. 1237, the "National Child Protection Act." Let me first state unequivocally that the Administration strongly supports the goals of the Act—protection of this Nation's children from abuse. Nothing is more important than the well-being of our most precious national resource—our children. The FBI and the Department of Justice are committed to the successful implementation of legislation which addresses this problem. My testimony today will address your bill from the perspective of the FBI.

As you know, I represent the FBI's newly formed Criminal Justice Information Services Division. CJIS, as the Division is known, is particularly affected by any legislation, such as H.R. 1237, which involves access to documented criminal information, whether it be information to identify fugitives or criminal history record. CJIS is now responsible for managing all FBI systems providing criminal or identification information to Federal, state, and local agencies. These systems include the National Crime Information Center, known as NCIC, the Uniform Crime Reporting program, and the fingerprint-based criminal history record system.

A brief word of explanation about some of these systems may be helpful because they may be affected directly by this and other similar legislative proposals. NCIC is the online system accessed by police officers typically when a citizen is contacted on the street. NCIC provides information specifically to enable the immediate identification of fugitives, missing persons, and stolen property such as motor vehicles.

The Interstate Identification Index, known as III, is accessed through the NCIC telecommunications network. III provides automated criminal history information based on name and a numeric identifier. An III response, which provides arrest and disposition information, originates from the criminal records maintained by 24 states, known as "participating states," and from FBI records for the 26 non- "participating" states. Due to laws of many of the 24 participating states which restrict dissemination of criminal records, III is currently reserved for 1) criminal justice agencies using III for criminal justice purposes, and 2) certain Federal agencies with National security responsibility for narrowly defined National security employee screening.

Perhaps most important to my discussion of H.R. 1237, is access to FBI-maintained fingerprint records. These records consist of fingerprints, personal identification information, such as date-of-birth and physical descriptors, and listings of the subject's arrests and dispositions of those arrests. These records are currently accessed by manual submission of ten-print fingerprint cards for both criminal justice and noncriminal justice purposes under applicable Federal and state laws.

All of these systems are in the process of being upgraded. The Integrated Automated Fingerprint Identification System (IAFIS), scheduled to be completed in early

1998, will support automated submission of ten-print fingerprint records for screening purposes. This system will allow the online submission and searching of fingerprints, and the return of relevant criminal history records to criminal justice requesters. This will greatly increase the speed and efficiency of noncriminal justice background screening possibly reducing the turn-around time from the current two weeks to two hours.

Many Federal and state agencies now access the fingerprint-based criminal history records maintained by the FBI for purposes similar or identical to the purpose of H.R. 1237. Thirty-one (31) states and the District of Columbia have enacted statutes that require criminal history screening for some category of child care providers. This screening is currently accomplished through submission of fingerprints to the FBI. In addition, the Comprehensive Crime Control Act of 1990 requires criminal history screening for employees of Federally-run child care centers. The effectiveness of screening pursuant to these provisions is currently being evaluated by the Inspector General of the Department of Health and Human Services.

Child care provider criminal history background screening is currently accomplished by providing the complete criminal history record to a Federal, state, or local agency. Private child care providers do not receive access to an applicant's criminal history record information. This system has tangible benefits. First, use of licensing or screening agencies ensures uniform application of standards with respect to whether certain criminal records disqualify an applicant for employment. Second, control of the information, which is generally sensitive and not for general dissemination, is greater with governmental agencies. Centralization of the screening function provides an easily accessible point for auditing of access to and dissemination of sensitive record information. This is an issue to which the FBI is particularly sensitive. Protection of criminal history records has proven to be difficult, especially without the existence of any Federal criminal sanctions against unauthorized possession and/or dissemination of such information.

One of the strengths of H.R. 1237 is its recognition of the importance of fingerprints to the screening process as the only existing method of positive identification. This proposal appropriately requires criminal history screening by fingerprint submissions and therefore will avoid misidentification. The FBI continues to support and urge the use of fingerprint identification in all criminal history screening systems.

Several other technical points should also be highlighted. Section 3(b)(E) limits the information that can be disseminated to authorized recipients to "convictions." FBI criminal history records to a large extent are not complete with respect to dispositions of arrests. Additionally, state criminal records are often not fully automated, making access as required by H.R. 1237 difficult, if not impossible, without significant updating and improvement of many state systems. H.R. 1237 contains some funding authorizations for these purposes, similar to funding provided in previous handgun purchaser screening legislation. Much of the burden of legislation which involves access to criminal history records falls on state record systems. Those burdens include, with respect to H.R. 1237, minimum standards for disposition reporting which must be met within specific time periods, subject to funding cuts if not met. It is likely that many states will face such reductions absent significant Federal funding.

I would also note that currently Congress has authorized the FBI to charge fees for noncriminal justice access to our criminal history record system. These fees are necessary to maintain the system given the additional burden that employment and licensing screening creates. We read nothing in H.R. 1237 that abrogates this authorization for screening requests under its provisions and believe such fees to be appropriate given the interests of both the Federal government and states in fairly apportioning the costs of the system.

In closing, let me again state: the FBI, Department of Justice, and the Administration strongly support the goals of this legislation and look forward to continued cooperation with your Subcommittee in your efforts to address this important problem.

I would be happy to answer any questions members of the Subcommittee may have.

Mr. EDWARDS. Mrs. Schroeder, do you have any questions of the FBI?

Mrs. SCHROEDER. I am not quite sure I understood, you said there are 24 States going along with the III?

Mr. NEMECEK. Yes. We actually have 50 States that make inquiries into the system. We are in the process of decentralizing the

FBI's recordkeeping responsibility because we know there are more accurate and complete records at the State level. We have 24 States now that have connected their computers to our computer systems so that we can have a rapid retrieval of that information rather than relying on the FBI's records.

So this actually is a positive step to giving us more complete records for these purposes.

Mrs. SCHROEDER. So this bill would help accelerate that, the $20 million in grants for States?

Mr. NEMECEK. Certainly, it will help. One of the conditions of participating is to have good quality records, more complete records, automated records, and certainly this money would help accelerate that process.

Mrs. SCHROEDER. What do you see as the biggest drawback? If you had a wish list—I know you said you basically support this. If there was one thing you could put in here that would make the FBI's job easier—is it an FBI problem, is it a State court problem, is it that you don't have proper equipment? What is the problem?

Mr. NEMECEK. I am sure it is a fairly common problem, but as long as I am wishing, the wish is that there would be sufficient money to have 100 percent accurate records with all of the dispositions, arrests, convictions, and that all these records were automated.

As I believe you are aware, we have spent a number of years trying to improve the quality of these records at the FBI and State and local level. We find that this is not always the highest priority in criminal justice, and that is getting these records, following up on an arrest when a court doesn't report a disposition, et cetera, and the entire burden falls upon the law enforcement agencies to collect this data.

So to the extent that we can improve these systems, and we are; to the extent we can create automated links from the courts to the State data bases to add the convictions; to the extent that we can automate correctional information, prosecutors' information, we have made a great deal of progress over the years, then I think we need to fund these initiatives, particularly at the local and State level, to get these complete records, because the future of criminal history record systems in this country is to focus on State data bases with the FBI playing a role of a national index for identification and then a coordinator of facilitating the flow of this information. So the funding is a very critical element.

The $20 million certainly will not complete the job. To the extent that we can find ways to continue the flow of information, that is probably the most important focus we could have.

Mrs. SCHROEDER. Where do you think the information channel breaks down the most or is there a better place to place it? It is hard for the average American to understand how we can have huge computers that can process a zillion transactions in seconds and yet we can't quite get this done. Is it that the law enforcement people have not quite kept up with the pace of technology, or would it be better placed at the courts where they are more apt to have clerks that are more used to paperwork? Do we have it in the right place or is it everybody is so understaffed that it is the thing that falls through?

How do we make it simpler and easier; because if it isn't any good, it isn't worth spending the money on?

Mr. NEMECEK. I believe you have the focus in the right place. Some 20 years ago when I first became involved in this issue, we used to have the concern that courts, corrections, prosecutors and law enforcement all didn't do their part. Each of these components have to do their part and we have to pull the record information together.

We seem to have made a lot of progress in breaking down those barriers, and probably the State Identification Bureau where you have the fingerprint-based identification, the expertise and the technology is the correct place to locate it, and what we have to do is to work on these channels of getting the other information—that is other than arrest data.

We find that we have the majority of the arrest data. It is the conviction data. So it is bringing those linkages and getting the other agencies to pull it in. Frankly, it is an issue of priorities and resources, and certainly it is a tough issue these days.

Mrs. SCHROEDER. Well, thank you very much, Mr. Chairman. As I say, as you watch this, if there are certain ideas you have for how we could better draft the bill, other than more money—but any other things, we could certainly use the input.

Mr. NEMECEK. Thank you very much.

Mr. EDWARDS. Mr. Canady.

Mr. CANADY. I have just a few questions.

About how many employment and licensing checks do you do in an average year?

Mr. NEMECEK. I don't have the figure for a year. The FBI's licensing and employment checks vary, but approximately 50 percent of all of our inquiries now on our systems are licensing and employment checks, which led to us actually establishing the fee system, because there is such a great increase in it. So I would say on a given day, via the submission of fingerprint cards, I would say perhaps 25,000 to 30,000 a day at the Federal level. This does not include the additional ones at the State level. So there is a significant number that are being made and it is increasing each year.

Mr. CANADY. With respect to that $23 fee that is charged, how much of that covers the actual costs of doing the individual search and how much of that is used to support your automation efforts?

Mr. NEMECEK. I don't know that I have the exact figure. That changes somewhat. I believe about 80 percent of its goes toward just doing the tech search and the process. I think it is approximately 20 percent to build this new online system that we are working on.

Mr. CANADY. In your testimony, you have expressed concern about records being disseminated to employers directly.

Mr. NEMECEK. Yes, sir.

Mr. CANADY. Do you believe that it is preferable that the whole record go to a State regulatory agency and that the State agency be then in the position to make the judgment on what is disqualifying and what is not?

Mr. NEMECEK. Yes, sir, absent any compelling reason to do otherwise, that is the standard way that licensing employment checks are done in this country. It places the review of the record in the

hands of skilled individuals that are capable of interpreting various State's laws, determining what is a conviction, what is not, and then providing a decision whether or not there is a disqualifying basis.

It does, as I indicated in my statement, provide some sort of standardization of interpreting the records and ensuring that the appropriate decisions are made. An argument could be made by someone that by seeing the actual record, they can somehow make a decision that deserves support. But generally, I don't see that being the case.

The regulating agency's job is to regulate and to grant these licenses, and I believe that is the appropriate place for it.

Mr. CANADY. Some people have suggested that a name check instead of a fingerprint check would be adequate at least as an initial screening mechanism, perhaps to be followed up by a fingerprint check. What would be your response to that approach?

Mr. NEMECEK. I guess my initial would be that for those that are honest and always tell the truth, it works just fine. To the extent that there is someone that has something to hide, in terms of their identity, then we are going to miss that check. That is why we have always stressed the importance of fingerprint checks as being the only positive identification.

Another way of describing it is how much of a loaf do we want when it comes to protecting our children. It is not the complete loaf and it is not the best way to do these checks.

Mr. CANADY. You may have touched on this earlier, but what is the current response time for a fingerprint check?

Mr. NEMECEK. I indicated in my statement that it is approximately 2 weeks. Depending upon resources, personnel, et cetera, this sometimes is 8 to 12 weeks after it arrives to the FBI. We find, though, that from State to State, these turnaround times vary widely, sometimes months, sometimes days or weeks, but there are tremendous disparities around the country, depending upon that State identification bureau's ability to respond. Generally speaking, when the State is charging a fee, they tend to get pretty good service.

Mr. CANADY. That is all the questions I have, Mr. Chairman.

Thank you very much.

Mr. EDWARDS. Thank you, Mr. Canady.

I might add that the FBI and the Judiciary Committee move in this area very reluctantly, because the fingerprint criminal history system of the FBI was designed for the criminal justice system for fighting crime and for sentencing, and for other very important crime issues, and once they get started where civilian agencies and other private organizations feel that they are entitled to the criminal histories, it does raise some real problems. So we have been guarded, and so has the FBI, in adding new groups that can get these criminal histories.

It has to be a pretty darned important organization, with a very important need before we look upon it favorably, and you can see what has happened. This didn't start until just a few years ago and

already over half the requests are for licensing and for organizations such as day care centers, banks, savings and loans, and people like that have the privilege of getting this information from the FBI.

But when the issue is real, and we think this is a real issue, we think Mrs. Schroeder and the sponsors of this bill and Oprah Winfrey and others are correct, that we can't let what has been going on go on as far as child care centers. We move in that direction, and the FBI has been cooperative, though it is a considerable additional burden to them.

I have no questions. Thank you very much, Mr. Nemecek.

Mr. NEMECEK. Thank you, Mr. Chairman.

Mr. EDWARDS. Our next witness is a personal friend of the Honorable Craig Washington of Houston, TX, who unfortunately could not be here today, but he sends his very best regards, Senator. He says he wishes he could be here and is very pleased that your expert testimony is being received today.

The next witness is the Honorable Vicki Miles-LaGrange, senator and chair of the Oklahoma Senate Judiciary Committee. She is testifying for the National Conference of State Legislatures.

Senator, welcome.

Without objection your full statement is a part of the record, and you may proceed.

STATEMENT OF VICKI MILES-LaGRANGE, SENATOR, OKLAHOMA STATE LEGISLATURE, AND CHAIR, OKLAHOMA SENATE JUDICIARY COMMITTEE, ON BEHALF OF THE NATIONAL CONFERENCE OF STATE LEGISLATURES

Ms. MILES-LAGRANGE. Thank you very much.

Good morning. On behalf of the National Conference of State Legislatures, and I am here in that capacity this morning, representing that organization as chair of the Law and Justice Committee, we support the goal of improving criminal history records which are sought in this bill. Certainly, a nationwide criminal history background check we believe can be very useful in the field of child care, as well as in other areas.

I would like to just mention that I guess I am particularly sensitive to this area myself, personally. Before serving in the legislature, I served as a State prosecutor and saw firsthand the very frightening toll that abuse exacts from our Nation's children.

Let me speak very briefly to a cost issue that is a concern of NCSL. We believe that the cost of improving automation and disposition rate of the State criminal history records is not calculated and may not be accurately reflected by the set-aside in the Byrne Memorial Fund and the additional $20 million which is in your bill. Certainly, the omnibus crime bill, the last session, authorized $100 million annually to accomplish many of the same objectives.

The bill reiterates the availability of funding under the drug control system improvement grants and it offers this $20 million for automation. I don't know if it is really clear from the bill that the amounts through the set-asides and the additional grants were chosen based upon very specific cost estimates, showing the actual cost that a particular State might face over the next 3 years to actually comply with the mandate.

One idea of those costs, just looking at my own State, the State of Oklahoma, where the estimate to actually consolidate criminal history records and bring them online in the automated fingerprint identification system would have a cost of $5.8 million over a 3-year period. The State of Oklahoma is currently under the 80-percent disposition which is required in the bill, but we certainly hope to improve very quickly and we are certainly working in that direction.

Under the criminal history records improvement program, the State of Oklahoma has received another $176,000 for July 1992, through June 1994, to improve the accuracy, the completeness and the timeliness of our records. Just by comparison, some of the other States have much further to go in their process, and although we are unable at this hearing to really provide estimates, the National Conference of State Legislatures is certainly willing to work with the committee to try to obtain more accurate estimates of real potential cost to comply with the bill.

We believe that criminal history background checks certainly can be useful, but it is also the position of NCSL that the criminal history background checks are still only a part of what both the Federal and State governments must do to ensure safe environments for our children. We strongly support this measure, and believe that there are excellent benefits to be derived. At the same time, we hope that we don't create any unrealistic expectations about the benefits to be derived from a nationwide criminal history background check, expecting too much, if you will.

I guess the whole tragedy of the child sexual abuse area that certainly this bill seeks to address, and addresses very effectively, is that until we continue to concentrate very serious resources at both the State and the national level on child abuse prevention, we all are just only going to be scratching the surface, and in that respect, our organization supports the goals of the Child Abuse Prevention and Treatment Act. We hope that the Federal Government will continue its commitment to confronting and preventing this national disgrace.

As I mentioned earlier, Oklahoma, among many other States, has adopted mandatory fingerprints checks for some in the child care system, and I have for your perusal a State by State grid of those States adopting criminal history background checks and who has access to those records.

Mr. EDWARDS. That will be made a part of the record also.

[The information follows:]

STATE CRIMINAL HISTORY BACKGROUND CHECK LAWS (through December 31, 1992)

This table was copyrighted in 1993 by the National Center for Missing and Exploited Children, Arlington, Virginia, USA and reprinted from Selected State Legislation: A Guide for Effective Laws to Protect Children with permission. All rights reserved.

STATE CRIMINAL HISTORY BACKGROUND CHECK LAWS
(through December 31, 1992)

State	Daycare	Schools	Foster Care and Residential Facilities	Other Organizations or Individuals
Alabama	§26-20-1 T,V public or private child care center or child care home	§26-20-1 T,V	§26-20-1 T,V public or private residential facility, intermediate or long-term care facility, correctional or detention facility	§26-20-1 T,V any organization providing services to children may request
Alaska	§12-3-2-18 E §12-3-2-19 L child care center or home		§12-3-2-18 E §12-3-2-18 L foster home or residential facility	§12.62.035 E,V any organization providing services to children may request.
Arizona	§33-883.02 child care center personnel. §33-883.03 child care home personnel.	§28-414.01 B §15-512 §15-534 §15-1380 E,V	§41-1750 adoptive parents or custodians. §41-2814 E,V state secure care facility §14-1606.02 E state correctional facility.	§41-1750 E,V any organization providing services to children may request §8-203.01 state probation officers §8-230.02 §46-141 all state personnel paid or volunteer providing service directly to juveniles
Arkansas				§12-12.211 criminal history information made available only to criminal justice agencies and regulatory agencies with specific statutory access.
California	Health and Safety Code §1596.871 L,E daycare facility.	Education Code §44332.5 certified public school employees. Vehicle Code §13376 B Education Code §44237 E private schools.		Penal Code §11105.3 L,T,V Human Resource Agency, nonprofit organization, or other organization specified by Attorney General may request.
Colorado	§26-6-107 child care centers, preschools, Dept. may require licensee to obtain. §19-10-115 child care center may require for employment.		§19-10-115 residential facilities may request for employment.	§19-10-115 day camp may require for employment. §26-6-107 Dept. may require for licensee
Connecticut	§54-142K Dept. of Human Resources may request for child care center or home licensee.	§14-44 B	§54-142 Dept. of Children and Youth may request on adoptive or foster parents.	§54-142K conviction information available to public; any organization providing services to children may request.

KEY
B = bus drivers
E = all employees who have direct contact with children
L = licensed owner, operator, or administrator of a facility, home, or organization providing services to children
O = others who have access to children in care
T = teachers or personnel with supervisory control
V = volunteers

State	Daycare	Schools	Foster Care and Residential Facilities	Other Organizations or Individuals
Delaware			§309 E,V residential care facility, adoptive and foster parents	
District of Columbia		Title 5 Chapter 10 D.C. Municipal Regulations E		
Florida	§402.3055 §402.313 L,E,O child care centers and homes.	§231.17 T certified personnel.	§393.0655 §409.175 E,V residential facilities and foster homes.	§409.175 E,V summer day camps
Georgia	§49-5-62 L,E child care centers and homes	§49-5-111 T political subdivision may require.	§49-5-62 L,E child care institutions.	§49-5-11 T any organization providing services to children may require.
Hawaii	§346-151 *et seq* L,E child care centers and homes	Dept. of Education Personnel Policy Regulation	§346-17 L,E foster homes.	§352-5.5 staff members of youth correctional facilities
Idaho	§39-1105 L,E,V child care centers and homes			
Illinois	Ch. 23 para. 2214.1 L,E child care centers and homes.	Ch. 122 para. 34-18.5 E Ch. 122 para. 10-21.9 E Ch. 95 1/2 para. 6-106.1 B		Ch. 127 para. 55a any organization providing services to children may request.
Indiana	§12-17.5-4-3 L child care center. §12-17.5-5-3 L child care home §5-2-5-5 E,V child care center or home operator may request.			

KEY
B = bus drivers
E = all employees who have direct contact with children
L = licensed owner, operator, or administrator of a facility, home, or organization providing services to children
O = others who have access to children in care
T = teachers or personnel with supervisory control
V = volunteers

State	Daycare	Schools	Foster Care and Residential Facilities	Other Organizations or Individuals
Iowa	§237A.5 L,E,O child care facility		§237.8 L,E,O foster care facility §125H.7 L,E,O medical institution for children.	§692.2 E,V youth service agency, approved by Commissioner of Public Safety, may request
Kansas	§65-516 E,V,O child care home		§65-516 E,V,O boarding home for children.	
Kentucky	§17-165 T child care centers	§160.380 T public schools.		§17.160 T any organization providing services to children may request.
Louisiana	§46:51.2 T,V child care centers or homes	§17:15 E,B	§15:825.3 L,E juvenile detention, correction, or treatment facility §46:51.2 L,E,O foster home.	§15.587.1 T any organization providing services to children may request. §46:51.2 T,V any organization that Dept of Public Welfare determines has authority over children may request
Maine	Tit. 22 §8301 L,O child care homes.			Tit. 16 §615 conviction information available to the public.
Maryland	FL §5-561 L,E child care centers V child care centers may require L,E,O child care homes	FL §5-561 E public and private schools. V public and private schools may require	FL §5-561 L,E child care institutions V child care institutions may require L,E,O foster homes.	FL §5-561 E any organization providing services to children may require L,E state recreation centers and day or overnight camps V state recreation centers and day or overnight camps may require.
Massachusetts	102 CMR 7.00 L child care centers.	Ch 90 §8A B		
Michigan				§25.249(13) all persons in house. McGruff House
Minnesota	§245A.03 L,E,O child care centers and homes	§245A.03 L,E,V,O public and private schools	§245A.03 L,E,V,O residential facilities.	§245A.03 L,E,V,O recreation programs

KEY
B = bus drivers
E = all employees who have direct contact with children
L = licensed owner, operator, or administrator of a facility, home, or organization providing services to children
O = others who have access to children in care
T = teachers or personnel with supervisory control
V = volunteers

State	Daycare	Schools	Foster Care and Residential Facilities	Other Organizations or Individuals
Mississippi	§43-20-8 L,E child care centers §43-20-8 L,E,O child care homes.	§45-31-1 *et seq* E,V any unit of gov that renders services to children may request.	§45-31-1 *et seq* E,V an authorized business, nonprofit or volunteer organization, and any unit of gov that provides services to children may request.	§45-31-1 *et seq* an authorized business, nonprofit or volunteer organization, and any unit of gov that provides services to children may request
Missouri	§43.540 E,V child care centers or homes may request.	§43.540 E,V public or private school may request.	§43.540 E,V foster care home may request.	§43.540 E,V any association which provides services to children may request.
Montana				
Nebraska	§71-1903 L,E,O Dept. of Public Health and Safety may require for early childhood programs	Nebraska Dept. of Education Rule #91 004.01F recommended for bus drivers.	§71-1902 L,E,O Dept. of Public Health and Safety may conduct for foster homes.	
Nevada	§432A.170 L,E,V,O child care facility	§179A.200 E gov. agency or political subdivision may request. §391.033 T §391.100 E	§424.031 L,E,O foster homes.	§179A.200 E person providing services to children may request §170A.175 L,E,V,O outdoor youth program
New Hampshire	§170-E:7 E child care centers and homes.		§170-E:29 E foster homes and residential facilities.	
New Jersey	P.L. 1991 ch. 278 L,E,O family daycare homes.	§18A:6-4.13 E nonpublic school may require. §18A:39017 B §18A:6-7.1 E,B public schools.		
New Mexico	§32-9-3 L,E child care facilities.	§28-2-3 E state or any political subdivision may require	§32-9-3 L,E juvenile detention, correction, or treatment facilities. §28-2-3 E state or political subdivision may require.	

KEY
B = bus drivers
E = all employees who have direct contact with children
L = licensed owner, operator, or administrator of a facility, home, or organization providing services to children
O = others who have access to children in care
T = teachers or personnel with supervisory control
V = volunteers

State	Daycare	Schools	Foster Care and Residential Facilities	Other Organizations or Individuals
New York	Social Services Code §424-a L.E.V child care centers and homes.	Vehicle and Traffic Code §509-d B	Social Services Code §424-a L.E.V.O foster homes and adoptive parents.	Social Services Code §424-a L.E.V camps.
North Carolina	§110-90.1 child care centers and homes.			
North Dakota	§50-11.1-04 L.E.O child care centers and homes.			§50-11.1-06.2 listing in child care registry is voluntary. Any person may verify if a care provider is listed.
Ohio	§5104.09 L.E child care centers. §5104.09 L.E.O child care homes.			
Oklahoma	Tit. 10 §404.1 E child care center owner may request.	Tit. 70 §5-142 E local Board of Education may request.	Tit. 10 §404.1 E residential child care facility.	
Oregon	§418.820 L.E.V.O may be required for child care centers.	§242.550 may be required for custodians of public schools.	§418.820 L.E juvenile detention, correction, or treatment facility. §181.537 may be required for adoptive parents, foster care homes, or state residential facilities.	
Pennsylvania	Tit. 23 §6344 E child care centers and homes.	Tit. 24 §1-111 E public and private schools.	Tit. 23 §6344 foster care homes and adoptive parents.	Tit. 23 §6344 E any organization providing services to children.
Rhode Island	§40-13.2-2 L.E child care centers and homes.	§16-48-2 private schools.		
South Carolina	§20-7-2730 L.E child care centers and homes.	§59-26-40 T public schools.		
South Dakota	§26-6-14.9 L.E.O child care home may request.			

KEY
B = bus drivers
E = all employees who have direct contact with children
L = licensed owner, operator, or administrator of a facility, home, or organization providing services to children
O = others who have access to children in care
T = teachers or personnel with supervisory control
V = volunteers

State	Daycare	Schools	Foster Care and Residential Facilities	Other Organizations or Individuals
Tennessee		§49-5-406 T must disclose background	§37-1-408 §71-3-529 E adoptive parents, foster homes, and residential facilities	
Texas	Human Resources Code §22.006 L,E,O child care centers and homes may require	Educ. Code §21.914 E public schools. §11.064 E School for the Blind §11.033 E School for the Deaf	Human Resources Code §22.006 foster homes and adoptive parents may request.	Human Resources Code §80.003 local law enforcement may obtain on neighborhood child watch program participants and on McGruff House residents §22.006 may require for Big Brothers, Big Sisters, Home Health Care Providers, and court-appointed special advocates (CASA) for abused or neglected children
Utah		§53A-3-410 E,V School Board may require		
Vermont				
Virginia	§63.1-198 L,O child care centers and homes §63.1-198.1 E licensed child care centers and homes §63.1-198.2 E,V unlicensed facility may require §63.1-196.04 voluntary registration of small family daycare homes	§22.1-296.2 E	§63.1-198.1 foster homes and adoptive parents	
Washington	§43.43.830 E,V child care centers and homes	§43.43.830 noncertified personnel §28A.70.140 certified personnel	§43.20A.710 state employees in positions responsible for supervision, care or treatment of children	§43.43.830 E,V any organization that provides services to children younger than the age of 16
West Virginia	§49-2B-8 L,E child care centers.	§15-2-24 gov. agencies may receive information from criminal identification bureau.	§49-2B-8 L,E private residential facility	
Wisconsin	§55.06 L child care centers and homes			§55.06 L day camps
Wyoming				

KEY

B = bus drivers
E = all employees who have direct contact with children
L = licensed owner, operator, or administrator of a facility home, or organization providing services to children
O = others who have access to children in care
T = teachers or personnel with supervisory control
V = volunteers

Ms. MILES-LAGRANGE. I would like to make just another comment and then I will wind up and will be happy to try to respond to questions.

I mentioned those additional things that are going to be absolutely necessary if we are going to ever really effectively squelch child abuse across this Nation. In Oklahoma, we have taken a number of steps that actually parallel the goals of the National Child Protection Act.

For example, applicants for family day care are checked against the department of human services child abuse registry. Then there are four references required for staff and day care centers. Then staff and centers must have training on the mandatory reporting of child abuse. Then parents are additionally informed through another publication on how to detect and report suspected abuse and parents are encouraged to examine the child care provider's licensing files, which are open records.

As I mentioned, we have recently amended our law there to mandate criminal background checks for applicants for employment in both day care centers and family day care homes. And that background check may include a search of the department of corrections sex offender registration file, and currently those checks are by name.

Teachers can undergo a national fingerprint check through the FBI. However, the records from the FBI that our State currently relies on for checks may only have a 50- to 60-percent disposition, because, for the most part, the States must submit the information to the bureau before a disposition can be made.

We are very encouraged by both the spirit and the intent of H.R. 1237, and I cautiously say that by targeting only a fraction of the problem of child abuse, we don't want to risk over promising, because even at the target of 80 percent, final disposition in this bill, as we all know, that remaining 20 percent would pose a risk. But more importantly, I think it is crucial to bear in mind that many of those who will abuse children do not necessarily have prior criminal records.

In closing, I would say that we applaud the fact that the use of background checks for noncriminal justice purposes is permissive. Certainly the bill creates requirements in the language of the proposed guidelines that in at least some instances may hinder the flexibility of States to respond to their particular needs.

With that, I will stop and try to respond to questions.

Mr. EDWARDS. Well, thank you, Senator. That was a very helpful statement.

[The prepared statement of Ms. Miles-LaGrange follows:]

PREPARED STATEMENT OF VICKI MILES-LAGRANGE, SENATOR, OKLAHOMA STATE LEGISLATURE, AND CHAIR, OKLAHOMA SENATE JUDICIARY COMMITTEE, ON BEHALF OF THE NATIONAL CONFERENCE OF STATE LEGISLATURES

Good morning. My name is Vicki Miles-LaGrange. I am the Chair of the Oklahoma Senate Judiciary Committee. Before serving in the legislature, I served as a state prosecutor and saw first hand the frightening toll that abuse exacts from our nation's children. These experiences have come together in my service as a member of the Oklahoma Senate. Since elected in 1986, I have sponsored a variety of bills aimed at improving the safety of our children. This year we made mandatory the requirement that criminal investigations be conducted for certain personnel in the child care setting.

I come before you on behalf of the National Conference of State Legislatures, where I serve as chair of the Law and Justice Committee. My purpose here today is to bring my experience as a legislator and the perspective of my colleagues to offer insights and raise questions about H.R. 1237, "The National Child Protection Act of 1993."

The bill that is the subject of this hearing contains ideas that have circulated for a decade. Background checks are seen as one way to reduce the risk that dangerous persons will volunteer or be hired to work with children away from home. Meanwhile, states have been active in implementing some of the ideas in the bill. State responses have varied, though, from requiring fingerprint-based background checks for a broad variety of persons in contact with children, to voluntary name based checks for a limited pool of applicants. The trend is toward expanding the use of background checks.

In our testimony, we first raise questions about the scope of the mandate and the adequacy of the funding authorized under this bill. We then stress that parts of the bill that are intended to be permissive should avoid hidden mandates that are not necessary to further the purposes of the bill. I will share some of my experiences in Oklahoma to explain how we are responding to some of the needs of our children. We believe that the common interest in creating a national network to share information is consistent with federalism, but that states should retain authority over the use of information within their borders. Sketches of the actions of several states will bear out the distinction between national interest and state interest. Finally, we will offer a few suggestions section by section to assist the committee in crafting legislation that respects the ability of states to be responsive to their constituencies.

MANDATES AND FUNDING

This bill reinforces the trend by states to use criminal history data to reduce risks to children cared for out of the home. The method of reinforcement is to mandate that states create criminal history data bases that are at least 80 percent accurate in showing the final disposition of cases for persons arrested. The bill also encourages automation of criminal history records and develops guidelines for states to use in processing nationwide criminal history background checks for non-criminal justice purpose relating to the out-of-home care of children.

Improved national criminal background checks can have significant benefits in law enforcement. By providing an impetus for the improvement of state records, this bill serves a useful purpose. And, states will see the benefit in expanding the network of cooperation by tracking child abusers that move from state to state to avoid detection.

These laudable goals should become national policy, however, only after the national government expresses its commitment with satisfactory and stable funding. In order for sound policy to emanate from Washington, much greater attention needs to be given to the costs that will be passed to the taxpayer. NCSL has led the way in educating Congress and the public about the perils of unfunded mandates. Mandates cause civic impairment by separating decisions to spend from decisions to tax. Citizens are uncertain which level of government to reward or blame, and accountability in government suffers.

This bill does offer some funding. However, if the level of funding is reflective of the commitment of the federal government to seeing the nationwide check become a reality, we remain skeptical that this will be a true partnership. We urge the committee to confirm the national commitment to the success of the program by making the mandate effective only upon full appropriation of an adequate level of funding.

The bill reiterates the availability of funding under the drug control system improvement grants, and offers an additional $20 million in funding for automation. Unfortunately, it is not clear from the bill that the amounts through the set aside and the additional grants were chosen based upon specific cost estimates showing the actual cost states would face over the next three years to comply with the mandate. One idea of those costs may come from my own state, where it is estimated that to consolidate criminal history records and bring them on-line in an automated fingerprint identification system (AFIS) will have cost $5.8 million over 3 years. We are currently under 80 percent disposition but hope to improve quickly. Under the Criminal History Records Improvements Programs (CHIRP) we have received $176,500 for July 1992 through June 1994 to improve the accuracy, completeness and timeliness of our records. Other states have farther to go. Although we are unable at this hearing to provide estimates, we would be willing to work with the committee to try to obtain a more accurate estimate of potential costs.

The uncertain federal commitment in H.R.1237 is also suggested by the amount authorized for similar purposes in H.R. 3371, the Omnibus Crime Control Act of

1991, which did not become law. Section 503 would have authorized $100 million for fiscal year 1992 and all fiscal years thereafter. Under Title V of the 1991 crime bill, the federal government authorized the funds in order to permit nationwide background checks for persons seeking to purchase firearms. Although the users of the system are certainly different than those proposed in H.R. 3371, the goal of improving state criminal history records to make nationwide background checks feasible was similar. Language of H.R.1237 echoes much of the language creating the national criminal background check system in Title V of that crime bill.

Another part of the federal commitment has been the continuous effort of the Federal Bureau of Investigation to develop the Interstate Identification Index. This 20-year effort to enhance cooperation between states and the FBI has moved to the stage where the Attorney General is reviewing a compact that will regulate comprehensively the use of criminal history records for non-criminal justice purposes. While developing a system for the purposes of non-criminal justice background checks, we should see how the needs of child care providers can be integrated into the Interstate Identification Index.

NCSL normally objects to set aside programs in grants that are intended to give states flexibility in developing individualized responses. The drug control system improvement grants are such funds. A case can be made that the set-aside here is linked to the development of a national program that requires significant levels of uniformity in order to be successful. However, the problem with earmarking is that it assumes uniform needs, and while states all need assistance, their needs are not uniform.

The bill would withhold funds from states that are not able to meet guidelines. This provision should be considered cautiously, not automatically, as it may have unintended consequences. States are ultimately responsible for fulfilling all obligations, yet the individuals responsible for compliance here may be jeopardizing programs funded with the Byrne grants that are not delinquent or responsible for the delay. Congress has authorized funds in the past for improvement of criminal history records, and then removed the support. Senator DeConcini and Congressman George Miller sponsored legislation in 1984 to appropriate $25 million to encourage states to require national background checks, but the next year funding was dropped. In other programs, Congress has decreased funding for automation by redefining the expenditure as an administrative cost. We therefore caution that uncertain financial commitment can jeopardize implementation.

We believe that the imperative of stable funding from the national government must be met with responsible and ready cooperation from the states. It is essential to the process of state funding that state legislators become better informed about the nature of the program and existence of the federal commitment.

FLEXIBLE STATE REGULATION

We are encouraged by the fact that the bill has not attempted to mandate uniform requirements regarding who may request records checks. The language of Section 3—"A State may have in effect procedures to permit"—thankfully allows states the option of determining what organizations will have access to criminal history records. However, the specificity of the guidelines set out in the bill may be unnecessary to accomplish its goals. Because background checks are not a cure-all, it is even more important that states retain flexibility in determining priorities even after records are improved.

The federal government must consistently give states the tools for children's safety and maintain this commitment through the appropriations and regulatory processes. Under federal child care legislation passed in 1990, states retain the authority to regulate child care.

However, during the regulatory process, restrictions were placed on the ability of states to impose additional requirements, such as background checks, on unlicensed and unregulated providers. In September 1991, my colleague from Oklahoma, State Senator Bernest Cain appeared before the House Ways and Means Subcommittee on Human Resources to protest regulations that made national administrative preferences for "parental choice" the predominant factor in state regulation of child care. According to Senator Cain, who testified on behalf of NCSL, "Current state safety requirements such as fire extinguishers, smoke detectors, criminal background checks, tuberculosis tests, and safety inspections may all be jeopardized." This bill should reaffirm that states retain the right to authorize criminal background checks where needed.

States that have provided statutes to the FBI for 92-544 clearance permit some disclosure. Some states, however, have a greater sensitivity to issues of privacy than

others. Under the Constitution, they are permitted to enhance those individual protections. This legislation should studiously avoid allowing regulatory preemption of state privacy laws. States have legitimate reasons to respond to constituencies that demand privacy rights or fear discrimination, and thus limit the disclosure of their criminal history records for non-criminal justice purposes.

Another reason for leaving states with flexibility is that the use of criminal history background checks is only a narrow part of the solution to providing quality care for children. We should not set ourselves up for disappointment by expecting too much of criminal history records. Unfortunately, the tragedy of child sexual abuse that this bill seeks to address will continue unless we concentrate serious resources at the state and national level on child abuse prevention. The National Conference of State Legislatures supports the goals of the Child Abuse Prevention and Treatment Act and believes that the federal government should renew and expand its commitment to confronting and preventing this national disgrace.

LESSONS FROM OKLAHOMA

In Oklahoma, we have taken a number of steps that parallel the goals of the National Child Protection Act. Applicants for family day care are checked against the Department of Human Services child abuse registry. Four references are required for staff in day care centers. Staff in centers must have training on the mandatory reporting of child abuse. Parents are informed through a publication on how to detect and report suspected abuse. Parents are also encouraged to examine the child care provider's licensing files, which are open records.

We also recently amended our law to mandate criminal background checks of applicants for employment in day care centers or family day care homes. The background check may include a search of the Department of Corrections sex offender registration files. As yet, these checks are by name. Teachers can undergo a national fingerprint check through the FBI. The benefit of the name check is that it is less costly and more timely than a check through the FBI, which can take weeks or months. The records from the FBI that we now rely on for checks may have only a 50–60 percent disposition, because for the most part the FBI must rely on states to report the dispositions.

Thus, we should be wary of expecting too much from H.R.1237. By targeting only a fraction of the problem of child abuse, we risk overpromising. Even at the target of 80 percent final disposition in this bill, the remaining 20 percent would pose risk. But more importantly, it is crucial to bear in mind that many of those who will abuse children do not necessarily have prior criminal records.

In January 1990, the Joint Legislative Advisory Task Force on Child Care issued its report, "Building Better Child Care in Oklahoma." As a member of the Task Force I became well acquainted with massive demographic changes that rapidly expand the need for services for children outside the home. The conclusion of the Task Force was that "[t]he single most important factor that will increase the quality of care for children in child care facilities is the training of the child caregiver."

Related to training and to the issue of obtaining background checks is the fact of substantial turnover in the child care field. We found in Oklahoma that "[i]n any given year, 42 percent of the staff in early education and child care programs and 59 percent of providers in family day care homes will leave the field." Although the overwhelming majority of employees take these jobs because of their sincere concern for and love of children, most are paid minimum wages with no benefits. One effect of the turnover is that employers need to have the ability to hire promptly in order to maintain quality that comes from even minimal staffing. A more significant effect of the turnover is the toll on the children. While infants and toddlers have special needs for stability, the child often faces adjustment to two or more caregivers in a year.

We ask that members of this committee continue to recognize that each state struggles with the best way to protect its children while providing affordable care. Passing the costs of the checks on to the clients makes child care inaccessible for some. When we mandate safety precautions from fire exits to child/staff ratios, we are always confronted by cost issues. Although some of our decisions are made easy because the costs are minimal compared to the risks entailed, others do not come easily.

Even though the cost to conduct the search may be borne by the applicant under the bill, volunteer organizations that are compelled to conduct the background check could find that cost unacceptable and thus pass the cost along to the volunteer. The potential volunteer that is recruited to give a valued few hours each week, may feel that a criminal background check is insulting, costly, or too much trouble to pursue. There is always the possibility that unnecessary requirements could have a chilling

effect on perfectly able and energetic volunteers who are needed to fulfill community needs. That is why it is important that the bill leave the choice of requirements for background checks to the states.

It is in these difficult debates that the value of federalism is most pronounced; as states, we can innovate without putting the nation at risk. The principle of reserving power to the states can reinvigorate accountability and responsiveness in government.

STATE ACTIONS RELATIVE TO BACKGROUND CHECKS

The national interest in supporting the accuracy of the nationwide check is further underscored by the fact that nearly every state uses the FBI search for clearance of persons entrusted with money, property or people. According to the Federal Bureau of Investigation, 31 states now have laws that allow some entities supervising children to seek fingerprint background checks. In order for a state to participate in this program, it must submit an authorizing statute to Attorney General for approval.

Allowing states to choose to initiate various safety precautions including background checks is an important way for states to remain responsive to their constituencies and to innovate. On the other hand, consistent movement toward allowing nationwide background checks suggests the national interest in each state's reaching for a national disposition rate and standard of automation. The brief look at the states represented on this committee shows the variety of approaches to security for children cared for away from home.

In the chairman's state of California, the background check system has been in place for twenty years for public school teachers. California does fingerprint checks; for those residing in the state for more than 3 years an in-state search is done, otherwise the FBI search is also completed. Although California is largely automated, it places its disposition rate at 50 to 60 percent. With 550,000 applicants in 1992, the state raised $17,600,000 in revenue.

Massachusetts does not yet authorize the use of FBI checks but there is legislation pending to require background checks for some purposes. Right now, licensed day care is required to do background checks as a condition of licensure, but these are only name checks.

In North Carolina, a bill now in committee would mandate fingerprint criminal record checks of child day care providers and their spouses. Currently, the state is prepared to do only name background checks, as it does for teachers at the discretion of school districts. North Carolina charges $14 for a fingerprint check and does not consider it a revenue raiser. This state's disposition rate is near 90 percent.

Following the pattern of other states, North Carolina is taking other measures to improve the quality of child care. In the most recent session, it strengthened the ability of inspectors to make unannounced visits at centers, clarified revocation of licenses and improved fire prevention standards.

Florida, which has an open records law allowing private citizens to ask for a name check, is a pilot state for the National Fingerprint Pile project being developed by the FBI as the next step beyond the Interstate Identification Index. Florida has authorized criminal background checks for child care personnel since the early 1980's. It has authorized FBI fingerprint checks for child care facilities, mental health facilities, treatment personnel including volunteers for alcohol and drug abuse treatment for minors and juvenile delinquency personnel. School boards retain discretion whether to require background checks for volunteers, cooks and other persons. For teacher certification, Florida charges a $15 fee on top of the FBI's $23 fee. The state check can now take eight to twelve days, and the federal fingerprint check can add a couple months to the process.

Texas, like Florida, allows its Department of Human Services to do national checks on owners and employees of child care facilities, residents of registered family homes, persons providing adoptive or foster care for children in the custody of the department, volunteers in Big Brother/Big Sister programs and more. A recent Texas law allowing criminal background checks for volunteers will create substantial new costs and pressures because of the possible burden of thousands of new requests. Under the law, the Texas Department of Public Safety has authority to provide background data to one volunteer agency in Dallas that refers 66,000 volunteers to 760 agencies.

Illinois provides for name checks and fingerprint checks. Illinois has authorized national checks for child care licensees, school district employees, bus drivers and private adoption applicants. The fees range from $5 to $10 and are not considered a revenue raiser.

Colorado also has name checks for private citizens to use, and fingerprint checks for certified teachers and day care personnel. The fingerprint checks include national checks of applicants for a license to operate family care homes, residential child care facilities, child placement agencies and child care centers. Convictions of violent or sexual offenses, drug sales, or an offense which as an "adverse reflection" on the individual may bar child care employment.

New York does not do name checks, but has moved toward the Automated Fingerprint Identification System. The checks cost $25 plus a $25 surcharge in addition to the applicable FBI fee, which is $23. The FBI currently is authorized by state law to provide background checks for school bus drivers and attendants, as well as for employees of the New York City school system.

As illustrated above, states show a range of choices in the structure of their background checks, the populations covered and fees. States with large urban populations such as New York and California may opt to charge higher fees that offset expenses from a high volume of applications and from greater computer memory requirements. As each state moves to improve its program and to add persons to the list of those being checked in the nationwide system, the federal government, through the FBI must be prepared to respond promptly.

SECTION BY SECTION COMMENTS

The following comments are made to assist the committee in crafting a better bill. In general, principles of federalism—accountability, innovation and responsiveness—should deter the committee from regulating the details, where goals and objectives can be achieved by alternative means.

SECTION 2

The Attorney General is given authority to investigate "the records" in each state. What is probably meant is that authority is given to investigate the system, otherwise this seems to be a rather staring reach of federal authority into state records for non-criminal justice purposes. (b)(1)(A).

Asking states to have an "on-line capacity" is not clear. Although the context seems to suggest that states are able to participate in retrieving information, the law should make clear that only those criminal justice agencies authorized to disseminate and collect information are expected to be on-line, and then only to the FBI. (b)(1)(A).

The Attorney General is given plenary authority to establish guidelines for reporting and indexing information. (b)(1)(B). The law should make explicit that these guidelines are to be prepared in consultation with states. Specifically, representatives of legislatures and courts as well as data repositories should be included in the process early to improve chances for success. Final disposition relies upon information provided from a variety of sources, including law enforcement, prosecutors, courts and correctional facilities.

Also, the bill should perhaps take cognizance of the fact that significant work has begun on this issue by the Advisory Policy Board as they move toward a national fingerprint file. The issue appears less complex on paper than is actually the case. Sufficient consideration should be given to the costs of harmonization as states may be required to change much of their record-keeping.

Under (b)(2)(A), states are given 3 years to have an 80 percent disposition rate in computerized records on child abuse crime cases. How does this harmonize with the need for accurate disposition on all background check crimes? The statute defines them differently. Presumably, for the system to be effective, all background check crimes must have the requisite disposition. That is why the cost of making the system work must include more than the narrow focus of child abuse offenses.

Research should be targeted for use by state policy makers. The study of child abuse offenders to be done by the Office of Juvenile Justice and Delinquency Prevention should be interdisciplinary, not neglecting issues of health, mental health and education.

SECTION 3

Section (a) mandates that agencies respond promptly. We urge avoiding language that could encourage disputes, unless there is substantial evidence to suggest that agencies do not respond promptly to requests. Remember that failure to respond to a noncriminal justice inquiry can be caused by criminal justice demands on the system. The bill could unintentionally cause legal disputes over the priorities given law enforcement and other users of the system.

Also, we would be concerned in section (a) whether the permission to determine convictions and provide that information would by negative implication prevent states from acting on information that does not show a conviction. Again, we expect that the effort to grant states authority that they already have and are exercising regularly may end up with the unintended consequence of prohibiting state practices intended to increase the security of children. For instance, would a state be prevented from acting on a person who is on pre-trial release or diversion programs?

This section becomes quite detailed. We urge that Congress not include the mandatory language throughout the guidelines, especially because the use of the system itself is permissive. Perhaps states will develop different approaches to providing access to the system for persons with different levels of supervision of children.

Guidelines of the Attorney General should only be made in consultation with state policy makers, and not merely with criminal justice or child care specialists.

Under (C) the agency is to respond within 15 days. This mandate may not be feasible in some instances. The delay may not necessarily be from the state agency. They should not sacrifice accuracy and thoroughness to speed. Different applicants might also have different priorities within a given state. The bill should not lock states into arbitrary and unnecessary requirements.

Section (D)(2) prevents the report of the authorized agency from being the sole basis for determining the fitness of the provider. Some states might prefer to have the flexibility to assume that after going to the trouble and expense of making the national background check, one should be permitted to act on that information.

Under section (E), the details may not need to be set forth in this legislation. Disputes may arise between the authorized agency and the entity seeking to qualify a provider. If entities are not given full information, then the judgment of what is necessary to fulfill the purpose of the Act is left with the criminal justice agency. Because there may be legitimate and useful distinctions regarding the amount of information necessary, states, and not the Attorney General, should be given flexibility to make such decisions.

Under (F), an entity may choose to deny unsupervised access until determination of validity or the provider has waived the right to make a challenge. The language of the statute, however, does not seem to leave the entity the right to deny employment once the validity is called into question or the waiver is not granted. This seems to put the hiring agency in a bind. The language should ensure that all reasons valid under state law not to hire a person are still valid. Again, the existence of contending values suggests that the federal guidelines should be limited, or that the states should be given flexibility in this area.

Section (b)(2)(I) limits liability where an adverse decision is made on a provider. What controls the liability where a decision is made on incorrect information provided from the system where the decision is favorable to the provider?

SECTION 4

Section (b) The statistic to be followed by the Attorney General to determine supplemental grants is identifiable child abuse cases. Yet the act has separate definitions for child abuse cases and for background check offenses. The nationwide check used is to identify more than child abuse cases promptly.

Section (c) allows the Attorney General to penalize states that have not kept with the timetable of the act. The power to penalize takes effect within one year, but the timetable under section 2 of the act allows states three years to achieve 80 percent disposition. The Attorney General, however, has 180 days to work out a time line with the states. States face potential penalties even though the federal delay may be partially responsible for the failure to meet deadlines. The best way to ensure that states meet mandated guidelines is to fully fund the program. Therefore, no penalties should apply unless and until the authorized funding is fully appropriated.

SECTION 5

"Background check crime" should be flexible to meet state definitions. A minimum level can be set to provide some uniformity, yet some states may wish to include other offenses that warrant attention. Listing specific crimes that may be predictive of bad behavior may be interpreted as a limitation.

"Child care" definition seeks to be inclusive, but can bring the usefulness of the act down under its own weight. States have experimented with a variety of definitions concerning what level of care is deserving of fingerprint background checks. Adding volunteers can add significant costs. By applying the same guidelines to all state statutes allowing release of information, states lose the flexibility to determine which volunteers are in a position sufficiently responsible to request background checks.

CONCLUSION

The National Conference of State Legislatures shares this committee's concern that the care of our children is a major priority. Innovative solutions should be tried to arrest instances of abuse that threaten their well-being. In shaping these solutions, it is still necessary to respond to the taxpayers and to inform them of the realistic benefits. As legislators, we should respect the principle of funding our promises. As actors in the federal system, we can build a safer country while respecting the benefits of allowing states the right to be innovative and responsive.

Mr. EDWARDS. I think it is very important, one point you made in particular, which is that because a child day care center has an applicant who does not have a criminal record, that doesn't mean that it should substitute for a careful investigation of this person's background through references all other ways of investigation, because that is certainly not definitive, that the FBI does not have a criminal felony record of an individual.

Mrs. Schroeder.

Mrs. SCHROEDER. Thank you very much, Senator.

Your testimony, as I knew it would be, is very helpful. We are pleased that you are supportive and that NCSL is supportive, and thank you.

I think your caveat about how this is only a portion of what we can do about child abuse, is absolutely correct. The first bill I introduced when I got here 20 years ago was on child abuse, and I am still fighting that.

It is amazing how nobody wants to put resources out there. Thank goodness for Hawaii and Healthy Start. They seem to be the only ones with the real commitment to put the money down.

In the interim, we have to work in the world we are in and try and figure out what we can do to stop one of the things that drives people crazy, that is when they read about somebody abusing children who had a record in other places, and this is one thing that we could have stopped.

We realize this is only a piece of what we need to put together, but we need to put it together and keep working on it. We have gone through this with child support enforcement, too, and we get into this very awkward Kabuki theater type of thing with the States and the Federal Government. The States saying, yes, we should all be tied together, it would help us with child support enforcement or with background collection. On the other hand, the question of how we pay for it gets to be very troubling. We have now had some States who have done a very good job, some who have not done anything. If we suddenly federally fund the ones who didn't do anything, then the ones who did a good job, it is like they were foolish to have done a good job because they could have had the Federal Government pick it up later on. We see that with the floods, the cities who spent money and those who didn't.

I hear you say $20 million is not enough. How would you deal with that at this level as we try to get States and the Federal Government to work better together?

What is a fair allocation? The Federal Government can't pick up 100 percent of everything, but what is it reasonable for a State to contribute. The State benefits by this, too. It speeds up their criminal justice system.

Ms. MILES-LAGRANGE. Congresswoman Schroeder, I may go at it another way for purposes of trying to get to where you are trying

to get with this bill. I think it is critical because of the situation that you have described, with just kind of a hodgepodge where States are at different points and different levels in their automation, in their collection of dispositions, and so forth. I think for purposes of this bill, if this measure is really going to be effective, we need to be acting, or you need to be acting on good information, the best information that you can possibly get, about where the several States are in this process, about what the anticipated costs—the scenario I gave you just by way of illustration, about where Oklahoma has to get to, where it is now and where it has to get to, those were fairly quickly collected numbers and are certainly not hard and fast.

I think we need to know what we are dealing with, first, in terms of dollars, and then we can be more effective in kind of plugging in, if you will, to other existing measures. I think it was in the 1984 legislative session, Senator DeConcini and Congressman Miller sponsored legislation to appropriate $25 million to encourage States to require national background checks. But the next year, the funding was dropped.

In other programs, which conceivably this effort could be tied into—that is the criminal background checks for noncriminal justice purposes—we just need to get a better reading. I think that is where I would start.

You can share my response, Congresswoman, but I think that is where we have to start if we are going to try to get an effective handle on it, because your resources are limited, as the States' resources are limited. We are crying saying, don't send the mandate without the money, which you know, we know that you do the best you can in that regard as well. But trying to get a real handle on it, I think, is a critical first step.

Mr. EDWARDS. I think, Senator, that we all, at least on this committee, agree with you 100 percent, that the Federal Government should not mandate programs and not pay for them. Certainly in the criminal justice area, the same rule should apply. There is no disagreement on that issue whatsoever.

Mr. Canady.

Mr. CANADY. Thank you, Mr. Chairman.

Senator, we really appreciate your being here today. I think your comments have been helpful to us and you have highlighted some issues that are of critical importance; the issue about what this will really cost, and getting to the bottom of that issue I think is important.

I don't say that we can move forward with trying to implement something until we have a clear idea of the cost involved for the States. It is easy for us to sit here in Washington and pass laws and leave it up to the people in the States to bear the costs. I don't think we should go about business that way.

There is another issue that I want to raise about the bill. There is a concern brought to my attention, the broad coverage of the persons that would be considered child care providers. The bill has a definition of qualified entities, and basically that involves any organization, whether it is private or not-for-profit, which provides child care, and child care is defined in the bill as, "the provision of care,

treatment, education, training, instruction, supervision or recreation to children."

As one example of the possible application of this, it occurs to me that would include Sunday school teachers, for instance. Now, do you have any response to that, or any thoughts on that broad definition in the bill and whether there might be some things we could do to tighten the focus of this somewhat, not to exclude individuals where there is a substantial risk to children, but I don't know that we really want to include Sunday school teachers in this type of a program. I have serious reservations about whether that would be acceptable and would work.

Ms. MILES-LAGRANGE. I guess my response, Congressman, to that would be that on behalf of the National Conference of State Legislatures, I think it is very important to leave the choice to as great an extent as possible, the choice of requirements for background checks to the States. While we can make a lot of generalizations, the mechanism of child care may be set up very differently between State A and State B.

The cost issue, as relates to all of those people who have anything remotely to do with children, I guess my argument is that should be an issue that should be left to the States to make that determination. I can make a similar——

Mr. EDWARDS. Would the gentleman yield at that point?

The reason that we wrote the bill the way it was, is that the request must come from the State agency, so, therefore, the State agency will have control over the process and we trust that States in their wisdom will not be interested in providing information to irresponsible or unqualified agencies, and certainly not Sunday schools. Would that be correct, Senator?

Ms. MILES-LAGRANGE. That is my understanding of it, Congressman Edwards. But let me go on to say this. Our argument would be that clearly leave those requirements, if there is room for—certainly I don't think that is the intent of the bill, Congressman Canady, to include a Sunday school teacher, to have Sunday teachers, to require them to have a criminal background check.

Mr. CANADY. I would not suggest that is an intent of anyone. I am just concerned about the broad language. The term "child care" means the provision of care, treatment, education, training, instruction, supervision or recreation of children. A strong argument could be made that that would include Sunday school teachers because they are involved in that kind of activity. I think that is something we need to focus on and address.

I agree those types of issues generally can best be dealt with by the State legislatures, given the particular circumstances in the individual States.

Mr. EDWARDS. I would agree with the gentleman from Florida, that we can trust the State legislatures and that is the reason we don't lightly license the FBI to send criminal records to private people, private corporations, and we made that exception only for banks and savings and loans, and probably unwisely, because sometimes those records get out. Sometimes they are sold by individuals to other people. So these are very important records to be kept under very strict controls and we can trust the States, just like we think that the States can trust us.

Mrs. Schroeder, do you have any further questions?

Mrs. SCHROEDER. I want to apologize to the witness. I have been trying to help the new Surgeon General-designate, and when she calls, I answer. This has not been a good day. I think you understand.

Thank you so much for being here.

Ms. MILES-LAGRANGE. Thank you.

Mr. EDWARDS. Thank you very much, Senator. You have been very, very helpful.

The next three witnesses will testify as a panel. Lynn Swann is president of the National Board of Directors, Big Brothers and Big Sisters of America, and he is from Philadelphia, PA. We are pleased to have Mr. Swann here, even though I might say, Mr. Swann, that on quite a number of Sunday afternoons, being a fan of the Washington Redskins, you ruined my afternoon.

Also a member of the panel who will testify after Mr. Swann—and Mr. Potts, you can join Mr. Swann—is Lawrence F. Potts, who is director of administration of the Boy Scouts of America from Irving, TX. And the third member of the panel is Col. Thomas A. Handley, who is legal counsel, and he will be accompanied by Renova Williams, director of personnel of the Civil Air Patrol, Maxwell Air Force Base, in Montgomery, AL.

Mr. Swann, Mr. Potts, and Mr. Handley, without objection, your full statements will be made a part of the record.

We welcome all of you, and you may proceed.

STATEMENTS OF LYNN C. SWANN, PRESIDENT OF THE BOARD, BIG BROTHERS/BIG SISTERS OF AMERICA

Mr. SWANN. Mr. Chairman, committee members, counsel and staff, on behalf of Big Brothers and Big Sisters of America, I would like to thank you for inviting us to be here this morning.

Mr. Chairman, my mother once told me if you look past an individual's obvious faults, you usually find a pretty good person. Now that we know who your choice of football teams is, we know your obvious faults. I will not hold that against you.

Big Brothers and Big Sisters of America has been around since 1904, and we are the preeminent mentoring organization in this Nation. We have 507 agencies throughout the country. Our primary concern is to provide a service to young people across this country, to give them a positive adult companion to help guide them through what I feel is probably the most dangerous time for young people that we have ever seen in our Nation; to give them a positive outlook; to make them aware of all the possibilities that we have in this Nation for them to grow, to experience, and to be the best possible individual that they can be.

Today in our society our children are actually living and walking through a war zone with the possibilities for them to become injured, to die on the way to school in random shootings, young people carrying arms, drug abuse rampant in our country, child and sexual abuse. These are the conditions that our children are living under.

While our primary concern is to provide a productive and positive outlook for these young people, our one big concern has to be to protect these children. With that in mind, as a part of our basic

standards and practices for all of our agencies, we require them to do a criminal background check of all potential volunteers.

This sometimes has been costly. This sometimes has met with great obstacles, but we have endured the cost and the burden of getting this done. We continue to do other background checks, interviews delving into the background of these volunteers. We serve over 100,000 children in one-to-one relationships in the Nation now. We have several thousand on waiting lists.

Volunteers are very important to us and we need more volunteers across this Nation, but our average is that one out of six volunteers that applies becomes a big brother or big sister, because we are absolutely concerned with the quality of the relationship and protecting these young people. After going through an extensive background check, the parents and the children meet these volunteers and the parent has the ultimate decision of whether or not this relationship, this one-to-one match is going to be made.

And we would like to provide them with as much information for them to make the educated and smart decision for the welfare of their child. We are behind H.R. 1237. And we believe that like a young child, this bill is in its infancy, and it is being conceived with the idea that we want it to grow and be productive and to be strong.

But as a child is born into this world, it may not yet have all of its teeth and the power to sustain its own life. But with great care and concern and time, we hope to make sure that the child will grow strong and make the positive decisions and have the most positive outcome.

With that in mind, Big Brothers and Big Sisters stands ready to help and provide you with as much information, and stands behind H.R. 1237 to make sure that we begin the process, something that is long overdue and very necessary for all the child care volunteer agencies in this Nation.

Thank you.

Mr. EDWARDS. Thank you, Mr. Swann. We are pleased to have the support of your great organization.

[The prepared statement of Mr. Swann follows:]

Big Brothers/Big Sisters of America

Testimony of

Lynn C Swann
President of the Board
Big Brothers/Big Sisters of America

before the

House Committee on the Judiciary
Subcommittee on Civil and Constitutional Rights

Friday, 16 July 1993
Capitol Building
Washington, DC

230 North Thirteenth Street - Philadelphia - Pennsylvania 19107 215 567.7000 FAX 215 567.0394

Big Brothers/Big Sisters of America

Thank you, Chairman Brooks, for providing me the opportunity to testify before this Subcommittee regarding HR 1237, a bill to establish procedures for national criminal background checks.

I am Lynn Swann, president of the board of Big Brothers/Big Sisters of America, the federated movement of over five hundred Big Brothers/Big Sisters affiliated agencies, located in all fifty states. The Big Brothers/Big Sisters movement began in 1904 to provide One-To-One services to boys and girls in need of additional adult support and guidance.

Big Brothers/Big Sisters of America exists to build the capacity of local affiliated agencies to give children and youth, typically from single parent homes, the opportunity to experience healthy relationships with caring adult volunteers, primarily through One-To-One services. Such relationships are the foundation for developing the full potential of boys and girls as they grow to become competent and caring men and women.

Mr Chairman, as you know, our nation's children face greater obstacles today than ever before. Illiteracy, substance abuse and broken families challenge social service organizations such as ours. Big Brothers/Big Sisters of America, however, is working to meet that challenge by helping troubled children to lead productive lives.

The One-To-One program works. According to the Carnegie Council on Adolescent Development, at-risk children who have successfully overcome problems *"have been shown to have at least one significant positive role model,"* other than a parent. It is this very premise on which the Big Brothers/Big Sisters movement is based, and the reason why I appear before you this morning.

I encourage your support and adoption of HR 1237 because it will assist in protecting the children we serve. Protecting children is our highest priority.

Selection of the most appropriate volunteers to serve as Big Brothers and Big Sisters is a task our affiliated agencies take very seriously. We believe we have a comprehensive approach to the selection of adult volunteers which includes orientation, written application, at least three references, two in-depth interviews,

230 North Thirteenth Street - Philadelphia - Pennsylvania 19107 215 567.7000 FAX 215 567.0394

Big Brothers/Big Sisters of America

home assessment, interviews with significant others, criminal background checks and, in some cases, psychological testing. Additionally, all applicants must go through a child sexual abuse prevention orientation, education or training.

It is a comprehensive approach, but not foolproof. Our affiliates are required by our ***Standards and Required Procedures for One-To-One Service*** to obtain the arrest and conviction records of a volunteer from local, state or national law enforcement authorities, where legally permissible. Where such records are not legally accessible to the agency, the volunteer must provide an authentic copy of his/her arrest and conviction records.

As you can see, a critical component of our volunteer selection process is the criminal background check that all agencies must conduct. Some states do not permit or do not assist with the obtaining of police checks (for example, New York and New Jersey), while others require cost prohibiting fees; some agencies can only obtain local or county checks.

Considering our volunteer population, typically individuals under age 35, a highly mobile age bracket, and our wide use of college and military personnel who travel and live in various locations, the need is to go beyond the local or state system to obtain criminal background checks.

A few states now require fingerprinting as a means of identification. Fingerprinting is effective, however, we are concerned with the amount of time involved with securing fingerprints and obtaining criminal background checks. Our volunteer selection process (from inquiry through acceptance) typically takes approximately four to six weeks. Our agencies in Maryland and California, for example, have experienced lengthy delays in the processing of criminal checks. We would hope that the process addressed in this legislation would be conducted in a timely manner so that we would not risk losing valuable volunteers because of excessive processing time. Our volunteers are the life blood of the service we provide and our agencies need to be able to process these volunteers in a timely manner.

In addition to the selection of volunteers, we are most interested in the prevention of child sexual abuse, and have developed EMPOWER, the child sexual abuse education and prevention program designed by Big Brothers/Big Sisters of America for its affiliated agencies. This, and other similar prevention programs, have proven effective in educating adults and children about the threat of child sexual abuse. EMPOWER

230 North Thirteenth Street - Philadelphia - Pennsylvania 19107 215 567.7000 FAX 215 567.0394

Big Brothers/Big Sisters of America

offers pre- and post-program questionnaires to measure program effectiveness for each of the six program variations.

EMPOWER can effectively be used to train professional staff, adult volunteers, parents, teens 13 years of age and older and children between the ages of 6 and 12. EMPOWER uses a variety of training methods that include videos, informal discussions, group activities and games for children. Training methods are flexible and can be easily adapted to the age and developmental level of the training population. The program design is based on the belief that providing training for professional staff, parents, adult volunteers, and most importantly, children and teens, is a responsible and needed contribution toward addressing a serious issue in our society.

While education is extremely important in the prevention of child abuse, it is also important to deter individuals from our program who could potentially harm children.

This legislation of national criminal background checks would create a uniform and consistent method of reporting and tracking individuals who have been involved in child abuse crimes. As a national organization, with affiliates in all fifty states, we are most interested in an approach on a national level that will enable our agencies to access criminal background checks. The modest investment of dollars would pay significant dividends, if only a few children are saved by this reporting requirement. We urge your full support of HR 1237.

Mr Chairman, I thank you for the opportunity to appear before your subcommittee today.

Lynn C Swann, Board President
Big Brothers/Big Sisters of America
16 July 1993

230 North Thirteenth Street - Philadelphia - Pennsylvania 19107 215 567.7000 FAX 215 567.0394

Mr. EDWARDS. We will now hear from the next member of the panel. Lawrence F. Potts, director of administration for Boy Scouts of America.

Mr. Potts.

STATEMENT OF LAWRENCE F. POTTS, DIRECTOR OF ADMINISTRATION, BOY SCOUTS OF AMERICA

Mr. POTTS. I, too, am pleased to be here today to represent the Boy Scouts of America and their views on H.R. 1237, the National Child Protection Act. I have attached to my statements some background information on the Boy Scouts of America, and also their child abuse prevention program. I also serve as a member-at-large on the U.S. Advisory Board on Child Abuse and Neglect, and I am not here today representing their views on this bill.

The Boy Scouts of America has been deeply concerned about the welfare of youth since 1910. More recently, in 1986, then chief scout executive, Ben Love, identified child abuse as one of five unacceptables. The others are drug abuse, hunger, illiteracy and youth unemployment.

To combat child abuse, BSA, with the help of experts, has designed a special five-point plan. The elements are: education at all levels, adults, parents, volunteers and even youth, in the detection and prevention of child abuse; assisting sponsoring organizations in strengthening leader selection procedures; creating barriers within the scouting program; encouraging prompt reporting of any alleged incident; and taking swift action once a report is received.

Much more indepth information on our program is contained in the excerpted article that was included in the handout materials.

Turning to the legislation, I want to give you some brief information on scouting so that can you understand our approach to this legislation. The charter of the Boy Scouts of America indicates that the purpose of the Boy Scouts of America is to provide, through other organizations, an educational program for boys and young adults to build character, learn citizenship, and develop personal fitness. Our method of program delivery may make us unique within the ranks of large national youth programs. We don't operate storefronts. We don't organize or operate Cub Scout packs or Boy Scout troops ourselves.

We offer the program of the Boy Scouts of America to community groups for them to use as part of their own youth work. Today there are more than 85,000 community organizations who use the scouting program. An example of such an organization would be a local church or a school PTA.

These local community organizations operate more than 124,000 Cub Scout packs, Boy Scout troops and other scouting units. In the operation of these units, these organizations provide more than 1.1 million registered volunteers. They are the community organizations which will be faced with this criminal background checking legislation once the States pass these laws.

Without these organizations, or their volunteers, our program, which serves more than 4.1 million youth, could not exist. The challenge that many of these organizations and other organizations face today is finding adequate volunteers, particularly in the inner-city programs. The volunteers are very difficult to find. While we

applaud your efforts to attack a very serious societal problem, while we all agree that one case of child abuse is one too many, child sexual abuse in institutions like schools, like churches, like nonprofit youth organizations, and like day care centers, probably amounts to less than 20 percent of the total child sexual abuse in our society. And sexual abuse is only 14 percent of all reported child abuse incidents.

Volunteers in youth programs are already stretched in terms of time and cost of participation. Many mothers and fathers will simply be unable to pay the additional cost involved in obtaining fingerprints or background checks. Some might expect that organizations should pay, but local PTA's and churches don't have the kind of funds to pay for 20 volunteer leaders who would be involved in a Cub Scout pack.

It is undoubtedly true that many worthy volunteers would simply not wish to subject themselves to being fingerprinted. The cost in the loss of volunteers would be significant with most estimates running from 20 to 30 percent. And the loss of volunteers will translate directly into a loss of programs for youth.

Some have thought that making the fingerprint background check optional for the organization will make it easier on volunteer organizations and I would point out, however, that this legislation, if passed by the States, using the language that you have put up, would establish a legal standard of care. And that standard of care would have to be followed by all organizations who would otherwise suffer massive civil justice damages in the event of an abusive incident.

And unfortunately, experts have indicated that criminal background checks identify in advance nothing more than a small minority of those that are predisposed to molest a child. I have addressed my concerns with you today briefly on the legislation with respect to volunteers.

This is because BSA is primarily a volunteer movement and because we believe that there are some important distinctions between employees and volunteers. We believe that the focus of this legislation should be the employee who has an economic interest in their position.

In the event that this legislation goes forward, including volunteers as it does now, I would ask that it include language that volunteers and their organizations should be exempted from paying for either the fingerprint process or the criminal history check.

I thank you for inviting me here today.

Mr. EDWARDS. Well, thank you, Mr. Potts, and I am pleased that you emphasized that there must be investigation. A clean criminal record is no substitute for an investigation.

Mr. POTTS. We completely agree with you, Mr. Chairman. And we are also concerned that many people would look at this as the solution, the panacea, and will not do the other things that need to be done.

Mr. EDWARDS. Well, thank you.

[The prepared statement of Mr. Potts follows:]

PREPARED STATEMENT OF LAWRENCE F. POTTS, DIRECTOR OF ADMINISTRATION, BOY SCOUTS OF AMERICA

My name is Lawrence Potts. I work for the Boy Scouts of America in the capacity of Director of Administration. I am pleased to appear here today representing the Boy Scouts of America and their views on House Bill 1237, National Child Protection Act. I've attached to my statement some background information on the Boy Scouts of America and also on their Youth Protection Program

I also serve as a member-at-large on the U.S. Advisory Board on Child Abuse and Neglect. I am not here today representing their views on House Bill 1237.

The Boy Scouts of America has been deeply concerned about the welfare of youth since 1910. In 1986 then Chief Scout Executive, Ben Love, identified child abuse as one of "Five unacceptables" to BSA. The others are drug abuse, hunger, illiteracy, and youth unemployment. To combat child abuse BSA, with the help of experts, has designed a special five-point plan. The elements are: (1) education at all levels on the detection and prevention of child abuse, (2) assisting sponsoring organizations in strengthening leader selection procedures, (3) creating barriers to child abuse within Scouting, (4) encouraging prompt reporting of any alleged incident, and (5) taking swift action once a report is received. More in-depth information on the BSA program is contained in the excerpted article which is included in the handout materials.

Turning to the legislation I want to give you some brief information on Scouting so that you can understand our approach to the legislation. The Charter of the Boy Scouts of America indicates that the purpose of the Boy Scouts of America is to provide through other organizations an educational program for boys and young adults to build character, learn citizenship and develop personal fitness. Our method of program delivery may make us unique within the ranks of large national youth programs. We don't operate store fronts, organize, or operate Cub Scout packs and Boy Scout troops ourselves. We offer the program of the Boy Scouts of America to community groups for them to use as a part of their own youth work. Today more than 85,000 community organizations use the Scouting program, operating more than 124,000 Cub Scout packs, Boy Scout troops, and other Scouting units. An example of such an organization would be a local school PTA or church. These community organizations provide more than 1.1 million registered volunteers. These are the community organizations which would be faced with the criminal background legislation. Without these organizations and their volunteers, our program, which serves more than 4.1 million youth, could not exist .

The problem that many of these organizations face today is finding adequate volunteer leaders. The kids are there, but volunteers are more difficult to find, particularly in the inner cities. On the one hand we applaud your efforts to attack a very serious societal problem in this country. While we all agree that one case of sexual abuse is one too many, child sexual abuse in institutions and organizations probably amounts to less than 20% of the total child sexual abuse in our society, and sexual abuse is only 14% of all reported child abuse incidents.

Volunteers in youth programs are already stretched in terms of time and cost of participation. Many mothers and fathers will simply be unable to pay the additional cost involved in obtaining fingerprints or background checks. Some might expect that the organizations should pay, but local PTA's or churches don't have the kind of funds to pay for the 20 volunteer leaders who would be involved with a Cub Scout pack. It is also undoubtedly true that some worthy volunteers would simply not wish to subject themselves to being fingerprinted. More volunteers will be lost in this fashion. The cost in the loss of volunteers will be significant with most estimates running from 20% to 30%. Loss of volunteers will translate directly into a loss of programs for youth.

Some have thought that making the fingerprint background check optional for the organization will make it easier on volunteer organizations. I would point out that this legislation, if passed by the states, would establish a legal "standard of care." This "standard of care" would have to be followed by organizations who could otherwise suffer massive civil justice damages in the event of an abusive incident. Unfortunately, experts have indicated that criminal background checks would identify in advance nothing more than a small minority of those who are predisposed to molest a child.

I have addressed my concerns briefly with you today on this legislation with respect to volunteers. This is because BSA is primarily a volunteer movement and because there are some important distinctions between employees and volunteers. We believe that the focus of this legislation should be employees who have an economic interest in their position. In the event that this legislation goes forward, including volunteers as it does now, I would ask that it include language that volunteers and

their organizations be exempted from paying for either the fingerprint process or the criminal background check.

I thank you for inviting me here today, and I hope that my comments have been helpful to your deliberations.

BOY SCOUTS OF AMERICA

External Communications
1325 West Walnut Hill Lane
P.O. Box 152079, Irving, Texas 75015-2079
Telephone 214-580-2000

FACT SHEET

BSA AT A GLANCE

PURPOSE

The purpose of the Boy Scouts of America, incorporated on February 8, 1910, and chartered by Congress in 1916, is to provide an educational program for boys and young adults to build character, to train in the responsibilities of participating citizenship, and to develop personal fitness.

CHARTERED ORGANIZATIONS

Community groups receive national charters to use the Scouting program as a part of their own youth work. These groups, which have goals compatible with those of the BSA, include religious, educational, civic, fraternal, business, and labor organizations, governmental bodies, corporations, professional associations, and citizens' groups.

PROGRAM

Tiger Cubs, BSA. A one-year program for first-grade (or 7-year-old) boys and their adult partners that stresses equal participation. The boy and adult meet weekly for family activities and monthly for an activity with other Tiger Cubs and adults in their group.

Cub Scouting. A family- and home-centered program for boys who are in second through fifth grades (or 8, 9, and 10 years old). When they enter the fourth grade, they can become Webelos Scouts and prepare to become Boy Scouts.

Boy Scouting. A program for boys 11 through 17 designed to achieve the aims of Scouting through a vigorous outdoor program and peer group leadership with the counsel of an adult Scoutmaster. (Boys also may become Boy Scouts if they have earned the Arrow of Light Award or have completed the fifth grade.)

Varsity Scouting. An active, exciting program for young men 14 through 17 built around five program fields of emphasis: advancement, high adventure, personal development, service, and special programs and events.

Exploring. A contemporary program for young men and women ages 14 through 20 that provides opportunities to participate in career, hobby, or sports programs in association with business and community organizations. Special-interest posts cover more than 180 careers, 40 hobbies, and 35 sports.

VOLUNTEER LEADERS

Volunteer adult leaders serve at all levels of Scouting in approximately 380 local councils, 32 areas, and 4 regions, and nationally with volunteer executive boards and committees providing guidance.

Each autonomous local council is chartered by the BSA, which provides program and training aids along the guidelines established by the national Executive Board and the national charter from Congress.

NATIONAL ACTIVITIES

Cub Scouting continues to strengthen the tie of the family in Scouting and to encourage physical fitness through the Cub Scout sports emphasis, and more than 2,200 Cub Scout day camps.

Boy Scouts and Varsity Scouts have many special activities available to them, such as camporees, summer camps, Scouting shows, and national jamborees. The Order of the Arrow, the national brotherhood of honor campers, recognizes those Scout campers who best exemplify the Scout Oath and Law in their daily lives, and it has local lodge, section, and national meetings. Those who have become Eagle Scouts, the highest advancement award in Scouting, may join the National Eagle Scout Association. All camps are inspected and accredited annually by teams of trained volunteers to ensure the health, safety, and quality of program for campers.

Exploring holds a biennial national conference for youth and adult members that offers workshops and activities on careers, leadership, sports, outdoor adventure, and personal skills.

The biennial national law enforcement Exploring conference provides competition, training, demonstrations, program exchanges, and career information in this field. An annual mock-trial competition provides a national challenge for Explorers interested in the legal field.

Scouting Anniversary Celebrations, during February, include observance of the BSA's February 8 birthday, Scout Sabbath, and Scout Sunday. Unit activities feature blue and gold banquets, courts of honor, and open-house meetings.

Cub Scouts, Boy Scouts, Varsity Scouts, and Explorers participate in Scouting Environment Day in April and Scouting Energy Day in October. Explorers and older Boy Scouts have a wide variety of exciting outdoor experiences available at the three national high-adventure areas located in Minnesota (with satellites in northern Wisconsin, Manitoba, and Ontario), Florida, and New Mexico. Volunteer leaders may attend the Philmont Training Center in New Mexico each summer for a weeklong training conference.

LEARNING FOR LIFE

Learning for Life is a wholly owned subsidiary of the Boy Scouts of America. The mission of Learning for Life is to serve others by helping to instill values of good character, participating citizenship, and personal fitness in young people, and in other ways prepare them to make ethical choices throughout their lives so that they can achieve full potential.

Learning for Life can help schools prepare students to handle today's complex society. It's designed to build confidence, motivation, and self-esteem. It can help students learn positive personal values and make ethical decisions. Character development is a lifelong process, with roots firmly planted in childhood. Learning for Life has curricula designed to fulfill its mission.

NATIONAL GOOD TURNS

The Good Turn remains an important part of Scouting. It can be a simple daily act of assistance from an individual youngster, or a coordinated national effort.

PUBLICATIONS

The Boy Scouts of America publishes three magazines for its members: *Boys' Life*, for all boys, once a month, *Exploring*, a magazine for young men and women and their Exploring leaders, four times a year, and *Scouting*, for all registered adults in Cub Scouting, Boy Scouting, and Exploring, six times a year.

In addition, handbooks for all phases of the Scouting program are published, as well as more than one hundred merit badge pamphlets for Boy Scouts, leader books, training pamphlets, several program helps booklets for unit leaders, and other literature for use by youth members, adult leaders, and parents.

FINANCIAL SUPPORT

The national council is supported largely through the annual fees paid by all members and service fees paid by local councils, an Annual Giving Campaign among national employees and selected volunteers, income from the sale of Scouting equipment, bequests, and special gifts. Local councils are supported by communities through the United Way, the annual Sustaining Membership Enrollment (SME), Friends of Scouting, special events, investment income, bequests, endowment gifts, and special contributions.

On the unit level, chartered organizations that use the Scouting program provide meeting places and often furnish program materials and other facilities. Youth members help to pay their own way by paying dues to their pack, troop, team, or post treasuries and through approved money-earning projects.

MEMBERSHIP AND UNITS

Membership since 1910 totals more than 85 million. As of December 31, 1992, membership was 5,339,813.

Youth Members		Adult Members		Units	
Tiger Cubs	367,549	Cub Scout leaders	576,225	Cub Scout packs	51,996
Cub Scouts	952,797	Lone Cub Scout leaders	56	Boy Scout troops	44,515
Webelos Scouts	790,190	Boy Scout leaders	422,063	Varsity Scout teams	6,211
Lone Cub Scouts	97	Varsity Scout leaders	20,108	Explorer posts	20,323
Boy Scouts	914,052	Lone Boy Scout leaders	121	Learning for Life	
Varsity Scouts	61,285	Explorer leaders	84,252	Elementary	883
Lone Boy Scouts	252	Council Scouters	69,633	Middle/junior high	526
Explorers	367,093	Learning for Life leaders		High school	2,213
Learning for Life		Elementary	3,114	Special needs	1,562
Elementary	120,640	Middle/junior high	1,602		128,229
Middle/junior high	64,410	High school	7,832		
High school	471,658	Special needs	4,479		
Special needs	40,305		1,189,485		
	4,150,328				

No 2-501

1993 Printing

BOY SCOUTS OF AMERICA

External Communications
1325 West Walnut Hill Lane
P.O. Box 152079, Irving, Texas 75015-2079
Telephone 214-580-2000

FACT SHEET

COMMUNITY ORGANIZATIONS AND THE BOY SCOUTS OF AMERICA

PURPOSE

That the purpose of this corporation shall be to promote, through organization and cooperation with other agencies, the ability of boys to do things for themselves and others, to train them in Scoutcraft, and to teach them patriotism, courage, self-reliance, and kindred virtues, using the methods which are now in common use by Boy Scouts.

Sec. 3, federal charter, Boy Scouts of America
June 15, 1916, by the United States Congress

CHARTERS

Two kinds of charters are issued by the Boy Scouts of America: one to community organizations, and the other to local BSA councils. The first enables community groups to use the Scouting program under their own leadership as a service to their children, youth, and families. The other empowers local councils to help chartered organizations effectively use the Scouting program and to expand the use of the program to other community groups.

HOW COMMUNITY ORGANIZATIONS USE THE SCOUTING PROGRAM

Schools, community and religious organizations, and groups, with the help of the BSA, organize Cub Scout packs, Boy Scout troops, Varsity Scout teams, Explorer posts, and Career Awareness posts for children and youth. They manage these units and control the program of activities to support the goals and objectives of the chartered organizations. When establishing a new unit these two important actions must be taken to ensure a quality Scouting program:

1. **Selecting leadership.** The head of the chartered organization appoints a chartered organization representative to provide leadership in the selection of a committee of adults that will provide overall supervision for the unit's program. The committee selects the adult unit leaders who work with the youth. The chartered organization representative is also a voting member of the local council and may serve as a member of the district committee.
2. **Providing a meeting place and promoting a good program.** The chartered organization arranges for adequate meeting facilities for the unit and promotes through its committee the full use of the program, including outdoor experiences, advancement, recognitions, and, in particular, Scouting's values.

HOW THE BSA SUPPORTS THE COMMUNITY ORGANIZATION

To support more than 124,628 Scouting units owned and operated by chartered organizations, more than 395 BSA councils provide professional counseling and administration, commissioner service, training for leaders, camping and outdoor facilities, program material and literature, planning tools, and other program aids. Councils also maintain records on units and their membership, provide rank certificates and merit badge cards, and maintain service centers where badges, insignia, literature, and other helps may be obtained.

In addition, annual charter review conferences are conducted by council representatives with chartered organization personnel to evaluate how effectively the Scouting program is being delivered and how it may be improved.

A Sampling of Chartered Organizations Serving Children, Youth, and Families with the Program of the Boy Scouts of America

BUSINESS AND INDUSTRY
Aluminum Company of America
AT&T
American Airlines, Inc.
Amoco Corporation
Burlington Northern, Inc.
Corning Glass Works
Dow Chemical Co.
Eastman Kodak Co.
Ford Motor Co.
General Electric Co.
General Motors Corp.
Goodyear Tire and Rubber Company
Hewlett-Packard Co.
Honeywell, Inc.
International Business Machines Corp.
J. C. Penney Company, Inc.
McDonnell-Douglas Corp.
PPG Industries, Inc.
Rockwell International Corp.
Tandy Corp.
Upjohn Co.
USX Corporation
Westinghouse Electric Corp.

COMMUNITY
Air Force Association
Alpha Phi Alpha
American Bar Association
American Legion, The
American Red Cross
AMVETS (American Veterans of WWII, Korea, and Vietnam)
Boys Clubs of America
Civil Air Patrol
Civitan International
Community Centers
Conservation Clubs
DAV (Disabled American Veterans)
Eagles, Fraternal Order of (F.O.E.)
Economic Opportunity Commission
Elks, Benevolent and Protective Order of (B.P.O.E.)
Exchange International
Farm Bureau Federation, American
Fire Chiefs, International Association of (I.A.F.C.)
Fire Departments
4-H
Future Farmers of America (F.F.A.)
Grange, National
Hospitals, Medical & Professional, Engineering Societies
Housing Projects
Indian Affairs, American Association on
Indian Tribal Councils
Izaak Walton League of America
Jaycees, United States
Job Corp Centers
Kiwanis International
Knights of Pythias
Lions International
Masonic Order
  Eastern Star, Order of
Military Reserves
Moose, Loyal Order of
National Guard, Army and Air
Neighborhood Associations
Odd Fellows, Independent Order of
Optimist International
Parents Without Partners
Police Departments
Power Squadrons
Rotary International
Roundtable International
Ruritan National
Sertoma International
Sons of the American Revolution
U.S. Air Force
U.S. Army
U.S. Coast Guard
U.S. Coast Guard Auxiliary
U.S. Marine Corps
U.S. Navy
VFW (Veterans of Foreign Wars and Auxiliaries)
Western Electric
Women's Clubs
YMCA (Young Man's Christian Association)
YMHA (Young Man's Hebrew Association)
YWCA (Young Women's Christian Association)

EDUCATION
Independent Schools, National Association of
PTA (National Congress of Parents and Teachers)
Private Schools
Public Schools

LABOR
AFL-CIO (American Federation of Labor and Congress of Industrial Organization)
  Automobile, Aerospace & Agricultural Implement Workers of America International Union, United
  Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers of America, International Brotherhood of
Communications Workers of America
Electronic, Electrical, Salaried, Machine and Furniture Workers, International Union of
Electrical Workers, International Brotherhood of
Engineers, International Union of Operating
Fire Fighters, International Association of
Food and Commercial Workers International Union, United
Glass, Pottery, Plastics and Allied Workers International Union
Industrial Workers of America, International Union, Allied
Iron Workers, International Association of Bridge, Structural and Ornamental
Letter Carriers, National Association of
Machinists and Aerospace Workers, International Association of
Molders and Allied Workers Union, International
Oil, Chemical and Atomic Workers International Union
Paperworkers International Union, United
Plumbing and Pipe Fitting Industry of the United States and Canada, United Association of Journeymen and Apprentices of the
Postal Workers Union, American
Rubber, Cork, Linoleum and Plastic Workers of America, United
Steelworkers of America, United
Teachers, American Federation of
United Industrial Workers of North America, Seafarers International Union of North America
Education Association, National
Teamsters, Chauffeurs, Warehousemen, and Helpers of America, International Brotherhood of

RELIGIOUS
African Methodist Episcopal Church
African Methodist Episcopal Zion Church
Armenian Church of North America
Assembly of God Church
Baha'i Faith
Baptist Churches
  American Baptist Association
  American Baptist Churches in USA
  General Association of Regular Baptists
  Primitive Baptist
Baptist Conventions
  National Baptist Convention of America
  National Baptist Convention USA, Inc.
  Progressive National Baptist Convention, Inc.
  Southern Baptist Convention
B'nai B'rith
Brethren, Church of the
Buddhist Churches of America
Byzantine Rite Catholic Church
Catholic Church (Roman)
Catholic Organizations
  Catholic Parent Organization, National Forum of
  Holy Name Society (Roman Catholic)
  Knights of Columbus
  Catholic Youth Organization
  Catholic War Veterans
  Serra International
Christian Church (Disciples of Christ)
Christian and Missionary Alliance Church
Church of Christ
Church of Jesus Christ of Latter-day Saints (Mormon)
Church of God
Congregational Church
Episcopal Church, The
Evangelical Churches
Federation of Islamic Associations in the U.S. and Canada
First Church of Christ, Scientist
Greek Orthodox
Jehovah's Witnesses
Jewish Synagogues and Centers
  Jewish War Veterans
Lutheran Churches
  Evangelical Lutheran Church in America, The
  Lutheran Church, Missouri Synod, The
Mennonite Church
Methodist Church, The United
Moravian Church in America
Nazarene, Church of the
Orthodox Churches
Pentecostal Churches
Presbyterian Church (USA)
  Cumberland Presbyterian Church
Reformed Church in America
Religious Society of Friends (Quakers)
Reorganized Church of Jesus Christ of Latter Day Saints
Salvation Army, The
Seventh Day Adventists
Unitarian Universalist Association

No 2-507

1992 Printing

CHILD ABUSE & NEGLECT

THE INTERNATIONAL JOURNAL

Official Publication of the International Society for Prevention of Child Abuse and Neglect

"The Youth Protection Program of the Boy Scouts of America"

Lawrence F. Potts
Boy Scouts of America, Irving, Texas

Reprinted from Volume 16, Number 3, 1992
Used with Permission

No. 46-005
1992 Printing

INTRODUCTION

OVER THE COURSE of its 80-year history, the Boy Scouts of America has become a part of the fabric of American society. The Scouting program extends into almost every city and town in the nation, involving millions of young people and adult volunteers each year. In fact, nearly 20 percent of the American youth population comes into contact with Scouting every year.

The nearly universal presence and availability of Scouting presents both problems and opportunities for the organization. Much like the public schools, Scouting must confront and deal with many of the social problems that plague our contemporary culture. At the same time, however, the Boy Scouts of America (BSA), as a well-organized, disciplined, and highly structured youth-serving organization, is in a strong position to have a positive impact on the pressing social problems of the day.

The BSA has a long tradition of addressing social problems within the context of building character, citizenship, and fitness among young people. Through Scouting, young boys can learn coping skills that will help them navigate through some of the hazards of contemporary American life.

In the early and mid-1980s, the national leadership of the BSA identified five compelling societal problems that posed challenges and opportunities for the BSA to have a positive impact. Referred to by the BSA as the "Five Unacceptables," the problems are: drug abuse, hunger, illiteracy, youth unemployment, and child abuse, including child sexual abuse.[1]

BOY SCOUTS OF AMERICA—THE ORGANIZATION

The BSA is made up of nearly 400 local councils accredited by the national BSA. Each local council is incorporated as a nonprofit organization and has its own staff and board of directors. The local councils are responsible for chartering sponsors, such as schools, churches, synagogues, and service organizations, which essentially own and operate the Scouting program for their own youth.

The national BSA develops the programs, establishes policies and procedures, provides leadership training for Scouting professionals and designs leadership programs for volunteer leaders. The national BSA also operates special high-adventure areas, such as Philmont Scout Ranch in the mountains of New Mexico and the Florida National High-Adventure Sea Base. Additionally, the national organization provides marketing support and produces and distributes a vast array of educational materials and Scouting supplies.

BSA Confronts Child Sexual Abuse

In the early and mid-1980s, child sexual abuse burst into the public consciousness by way of national media coverage of dramatic allegations in communities in Southern California and Minnesota. These incidents and the subsequent media coverage did much to heighten the public's awareness of child sexual abuse as a widespread societal problem.

Recognizing that BSA members, like the rest of society, could be affected by this widespread problem, the national leaders of the Boy Scouts of America committed the BSA to taking a leadership role in developing strategies to deter, if not prevent, all forms of child abuse, including sexual abuse. BSA officials reviewed the literature on child sexual abuse and consulted with nationally recognized experts for advice and guidance.

To address child sexual abuse in its Youth Protection Program, the BSA drew upon Dr. David Finkelhor's four preconditions for child sexual abuse as the issues to be dealt with in the program. Those four preconditions are: 1) An offender with the motivation to sexually abuse; 2) the molester must overcome internal inhibitions against abusing; 3) the molester must overcome external barriers to abusing; and 4) the molester must overcome resistance by the child.

Education at Many Levels

Because of the BSA's multilayered organizational structure, education aimed at the detection and prevention of child abuse had to be undertaken at many different levels, beginning with the 7,500 people employed full-time in Scouting across the country. Through this initial educational program, BSA employees were trained to recognize the different forms of child abuse, including child sexual abuse, and the methods employed by molesters. Each BSA employee also was made aware of the BSA's policies and procedures for handling reports or allegations of child abuse. The policies and procedures are spelled out in an official BSA publication for professional staff and key volunteers. Perhaps most importantly, the training program sent a message to every BSA employee that child abuse was an issue that the BSA would deal with openly and aggressively.

Training the BSA staff and support personnel was important, but developing a program to train the

more than 1 million adults who serve as Scouting volunteers each year was an even greater challenge. An initial pamphlet entitled *Child Abuse: Let's Talk About It* was published and distributed beginning in 1986. It contained a strong statement by the BSA officially expressing the organization's concern about child abuse generally and child sexual abuse, specifically. The BSA also produced and distributed a training program for adult volunteers that included a 90-minute videotape and printed learning guide. The training program was designed in such a way that it could be used by any youth-serving agency, given the widespread nature of the problem. This training packet was revised in 1990. The revised video interweaved dramatizations of typical child sexual abuse situations with comments by members of the BSA's Youth Protection Advisory Panel, and the content was broadened to be relevant to parents, as well as volunteer leaders. More than 1.3 million adult volunteers went through the training in 1990.

Any adult who attends the BSA's special programs must go through the Youth Protection training program, and a special training program was developed for adults and youths who attend the National Camp School. In addition, the revised *Boy Scout handbook*, as well as the handbooks for the three Cub Scout levels, include a pull-out, 24-page booklet, *How to protect your children from child abuse and drug abuse: A parent's guide*. The guide helps families develop their self-protection skills.

The Scout Handbook is one of the most widely distributed books in the world. The pull-out guide also, is included in the official BSA *Scoutmaster handbook*, as is a chapter on the BSA's Youth Protection Program. All told, more than 3.5 million copies of the Parent's Guide have been distributed by the BSA in just the first 18 months of publication, making it perhaps the most widely distributed single piece of youth protection literature.

After reviewing the materials available outside the BSA, the organization took an even bolder step with an educational video aimed at boys ages 10 to 14. Called *A time to tell*, the 29-minute educational video explores the problem of sexual molestation through the dramatization of several recognized risk factors: the presence of a stepfather; friends of the family; older youths who molest younger ones. The video, which is intended to be shown at any gathering of appropriate age youth, introduces what may be a unique educational concept—"The three Rs" of youth protection:

- Recognize strategies and situations used by child molesters that can lead to attempted molestation.
- Resist attempts of child molesters. Resistance will stop most molestations, since very few molesters will resort to force.
- Report individuals who attempt to molest you to your parents or other trusted adult.

A "presenter's orientation" that runs just under 5 minutes precedes the presentation of *A time to tell*. More than 3,500 copies of the video were distributed in the first year, and the BSA has encouraged duplication and even wider distribution of the educational video, both within and outside of Scouting. It also has been distributed by satellite to public and educational television stations across the country, which in many instances have aired it over their local and regional systems. Another educational video aimed at Cub Scouts (6- to 9-year-olds) was distributed in the fall of 1991. A future project will address adolescents, and that program will be coeducational.

INTERNAL SAFEGUARDS

While the BSA recognizes that there is no proven method for screening out potential child molesters, the organization has taken steps to create a hostile environment for them. These internal barriers begin with the volunteer leader selection process. The BSA throughout its long history has maintained that Scouting is essentially a local activity and that the sponsoring organizations and parents of Scouts are in the best position to know and select their volunteer adult leaders. The volunteer leaders of the packs, troops, and posts (the Scouting units) are selected by the Unit Committee, with the concurrence of the chartered organization.

A standard two-part application form specifically asks whether the applicant has been arrested for child abuse or other crimes. The form also asks for previous home addresses and references. A personal interview is required, and the application must be approved by the head of the chartered organization.

The BSA national office, as it has for more than 50 years, also maintains a file on individuals who for various reasons are ineligible to be accepted into Scouting. All registrations are checked annually against the file. Although applicants conceivably might lie in answering the questions, the application form puts them on notice that the organization is aggressively hostile toward molesters.

Policies That Create Barriers

In addition to the educational components, the BSA has established policies that are intended to protect youth from child abuse. Examples of these policies are:

- Two-deep leadership. Two registered adult leaders or one registered adult leader and a parent of a participant, one of whom must be 21 years of age or older, are required on all trips and outings. The chartered organization is responsible for ensuring that sufficient leadership is provided for all activities.

- Unaccompanied activities between an adult leader and a youth member are prohibited. In situations that require personal conferences, such as a Scoutmaster's conference, the meeting must be conducted in view of other adults and youths.

- Respect for privacy. Leaders are expected to respect the privacy of Scouts during activities that require changing clothes and dressing. Leaders also should protect their own privacy in similar situations.

- Separate accommodations. When camping, no youth is permitted to sleep in the tent of an adult other than his own parent or guardian.

- Proper preparation for high-adventure activities. Activities with elements of risk should never be undertaken without proper preparation, equipment, supervision, and safety measures.

- Appropriate attire is required for all activities. "Skinny dipping," for example, is not appropriate as part of the Scouting program.

- Secret organizations are prohibited. All aspects of the Boy Scout program are open to observation by parents and leaders.

- Constructive discipline. Discipline used in Scouting should be constructive and reflect Scouting's values. Corporal punishment is never permitted.

- Hazing is prohibited. Physical hazing and initiations are prohibited and may not be included as part of any Scouting activity.

- Junior leader training and supervision. Adult leadership must monitor and guide the leadership techniques used by junior leaders and see that BSA policies are followed.

Prompt Reporting and Action

Despite the best efforts of adult leaders and parents, potential molesters still may succeed in getting through the net and incidents of child sexual abuse still may occur. Because that possibility exists, youths are instructed specifically and unequivocally to report any incident immediately to an adult leader or other adult he feels he can trust.

Any adult leader who receives a report of child abuse is required to notify the local Scout executive immediately, and the executive is required to report the information to the local child protective services office and immediately remove the alleged molester from all Scouting-related activities until the case is resolved.

Delivery System Is Key

Perhaps the most important aspect of the BSA Youth Protection Program is the organization's highly developed and effective delivery system. Once a program or policy is adopted by the national headquarters, the people and systems are already in place to communicate and implement them at every level of Scouting. This well-developed delivery system enables the BSA to serve 4.2 million youths and 1.3 million adult volunteers in more than 130,000 Scouting units across the country. Continuing reports from the field indicate that the Youth Protection Program has been implemented aggressively and enthusiastically by the 397 local councils and their chartered organizations, or sponsors.

RESULTS

The BSA has no accurate statistics on the incidence of child sexual abuse in Scouting, but all the available indicators suggest that the problem is far less than in the population at large. At this point, there is only anecdotal evidence concerning the effectiveness of the BSA Youth Protection Program, but parents, volunteers, and youth strongly support it. As the BSA had hoped, the impact to some degree has spread even beyond Scouting. In some cities, for example, local councils are actively working with other youth-serving organizations to help them develop similar programs. In some cases, youths have felt encouraged to come forward and report molesters. In one Midwest city, for example, several youths turned in a molester after they watched the video, *A time to tell*. As a result, the local district attorney is now using the video with all victims of child sexual abuse seen there.

CONCLUSION

In attacking the problem of child abuse, the BSA has implemented a multi-part strategy that encompasses the following key elements:

1. Educating Scout volunteers, parents, and Scouts themselves to aid in the recognition, reporting and deterrence of child abuse.
2. Establishing leader selection procedures to prevent offenders from entering the BSA leadership ranks.
3. Establishing policies that create barriers for child abuse within the program.
4. Encouraging Scouts to report improper behavior in order to identify offenders quickly.
5. Swift removal and reporting of alleged offenders.

The BSA also established a Youth Protection Advisory Panel, made up of five leading experts in the field of child abuse, to assist the organization in keeping the Youth Protection Program up to date.

The BSA Youth Protection Program demonstrates that with committed leadership, a well-designed, multi-faceted strategy, an effective delivery system, and a tradition of discipline within the organization, today's youth service agencies have an important role in assisting their members in not becoming victims of sexual abuse.

NOTE: Reprint requests to Lawrence F. Potts, Administrative Group Director, Boy Scouts of America, 1325 Walnut Hill Lane, Irving, TX 75038-3096.

Mr. EDWARDS. The last member of the panel to testify is Col. Thomas H. Handley, who is legal counsel, and with him is Renova Williams, director of personnel, Civil Air Patrol from Montgomery, AL.

You may proceed.

STATEMENT OF COL. THOMAS A. HANDLEY, LEGAL COUNSEL, CIVIL AIR PATROL

Colonel HANDLEY. Thank you, Mr. Chairman, and members of the subcommittee. We appreciate the opportunity to appear and testify. I will try to be very brief in my remarks.

Many of the views that we have on this legislation have been announced by Mr. Potts. The Civil Air Patrol is chartered by the Congress under title 36 as a Federal corporation. It also serves as the proud auxiliary of the U.S. Air Force.

In its operations, it performs over 85 percent of all the inland search and rescue. It is now heavily engaged in counternarcotics activities, in passive surveillance and reporting; disaster relief, playing an active role in many of the disasters, including the floods that now plague the central part of this country.

The third mission that we perform under the charter of the Congress is that of an active cadet program. We have over 20,000 cadets under the supervision of about 30,000 senior members. We call our adult volunteers "senior members". We are an all-volunteer program. We are funded under title 10 under the Armed Services Committee to a certain extent for logistics support.

Civil Air Patrol has been involved in the child abuse issue for many years. In 1988, we began a program with the cooperation of the FBI to conduct a nationwide fingerprint screening program. We have been engaged in that program since then. And at the present time, all of our senior members are required to have a fingerprint submitted to the FBI.

We have established a procedure within our organization to review the records, which includes both arrests and convictions. And we exercise a quality control review of those records and it has been a very valuable program.

We greatly support the legislation. We would like to add that there are certain things that we would suggest it include, such as a provision to include arrest records along with convictions.

It has been our experience that in certain individuals you will find a pattern of arrests for such things as indecent exposure or assorted type of sexual things with no disposition; and that indicates a pattern of sexual problems. I think if the legislation stops at only convictions, I think you will deprive the evaluators of a very valuable tool in screening out people who are what we call the pedophiles.

And we have found in our review of this subject, that there are some very, very dedicated pedophiles out there that infiltrate youth organizations, volunteers primarily, such as the NAMBLA, the Man-Boy Love Association, which operates under specific charter and they attempt to devise ways to infiltrate one organization after another to have sex with young boys.

These organizations require a careful screening that I think this bill will help provide.

The other thing that we think the committee ought to consider is somehow permitting youth organizations, particularly the volunteers, to exchange membership lists or lists of members who we have disqualified for sexual misconduct. Since these pedophiles are known to go from organization to organization, if we as the Civil Air Patrol have had a case where, although not prosecuted as a criminal offense, that we have shown that they are inclined to molest a child, we keep a record of that. It would be very helpful if we would have the freedom to exchange that information with the other volunteer organizations. We think such a provision would be very helpful in the screening of pedophiles and the prevention of child abuse.

I totally support or we totally support Mr. Potts' view that the bill will establish a new standard of care in this industry. I have had the responsibility for monitoring litigation of the few cases we have had. And they are devastating, because the parents of children who are abused now, in addition to prosecuting the individuals, have turned to civil remedies against the youth organizations; and under the plaintiff's bar, they have proceeded to have a whole series of theories of liability under which claims are made for negligent employment and negligent retention.

These cases are tremendously emotional and they have resulted in multimillion-dollar judgments, settlements and so on. I think the committee ought to know that the insurance industry at this time is rapidly withdrawing from this market.

We are losing our insurance in December of this year for what they call SAME, sex and molestation exposure. The GL, or general liability, market has now determined that this is an unpredictable, unrateable type of risk that they simply don't want to cover. I think the end result is, if you cannot insure this risk, it will do many things to organizations such as put them out of business.

And I think it would be well if this committee might look and see what the options are for organizations that want to continue in business when the insurance is simply not there.

Our volunteers are not covered when they—if the insurance is simply not in place. So having said that, we support the legislation and would be glad to respond to questions.

I think the committee may want to hear from Ms. Williams, who can respond and describe how we process the fingerprint cards and what the problems are on the turnaround time and so on.

So at this time with the chairman's consent, I would like to have Ms. Williams address that.

[The prepared statement of Colonel Handley follows:]

PREPARED STATEMENT OF COL. THOMAS A. HANDLEY, LEGAL COUNSEL, CIVIL AIR PATROL

Mr. Chairman and members of the committee:

Thank you for the opportunity to appear before this Subcommittee to express Civil Air Patrol's views on the proposed legislation.

Congresswoman Schroeder and cosponsors of this legislation are to be commended for their recognition of a serious societal problem and for their leadership on behalf of this nation's most precious commodity, its children and youth. Volunteer organizations such as CAP have long been concerned with protecting our youth from a variety of harm. This legislation will address, at least in part, a major concern of child abuse. We are greatly encouraged that this problem is now receiving attention at the highest levels.

Civil Air Patrol is a nonprofit corporation chartered by Congress. It is also designated as an auxiliary of the United States Air Force. Congress has given CAP three nationwide missions in its corporate charter. They are (a) emergency services for communities, (b) aerospace education, and (c) operating a cadet program. Civil Air Patrol flies over 85% of all air search and rescue missions in this country each year in its Air Force auxiliary role. It now flies more hours on counter narcotics missions than search and rescue. In addition, it assists states and local communities in natural disasters, such as the recent flooding in the central states. Our cadet (youth) program has a structure which exposes young people to discipline and training that helps prepare them for careers in the military or civilian community. A significant number of each entry class at the Air Force Academy has prior CAP cadet training. Civil Air Patrol's membership consists of some 20,000 cadets between the ages of 13 and 18 and 34,000 adult volunteers.

Civil Air Patrol has had a long-standing concern with the problem of screening its volunteer adult members who would interact with its youth, i.e., its cadets. The most significant method known to date was the examination of an individual's criminal record. Civil Air Patrol first had an FBI fingerprint records screening program during World War II which continued until the early 1960s. That screening was not directly related to the youth program, but rather provided quality control over adult members generally. Civil Air Patrol resumed its FBI fingerprint screening program of adult members in late 1988 primarily as a result of concerns raised over its youth program as well as its counter narcotics activities. The national media has made everyone aware of the dangers involved in sex abuse of youth.

In addition, CAP has, since 1991, participated as a member of the National Assembly's Collaboration for Youth's Task Force on Child Sexual Abuse. One of the Task Force's objectives has been to seek effective ways to screen volunteer members working with children through collaboration with other national youth organizations. Other members include the Scouts, Salvation Army, Big Brothers and Big Sisters, etc.

Although not a panacea, FBI records screening is a valuable tool. For CAP, it was a national membership screening program that showed a clear policy of child protection against those who had criminal records.

Ironically, as the FBI screening program started, our long-time liability insurance carrier advised that it was excluding CAP's coverage for child sexual abuse. That carrier did not care whether CAP had an FBI screening program or not. It simply wanted to be relieved of that risk despite not having any claims.

Civil Air Patrol implemented the FBI records screening for our senior member volunteers in June 1988, fingerprinting all new applicants and targeting current members working with cadets for initial fingerprinting, eventually expanding screening to all members, regardless of their duty positions. We also imposed a dues assessment of $10.00 per member for a legal defense fund to sustain possible losses resulting from child sexual abuse litigation no longer covered by our liability insurance and to absorb the cost of additional corporate employees hired to process fingerprint cards.

Since implementation, CAP has received over 61,000 fingerprint cards from our CAP volunteers. Over 55,000 cards were forwarded to the FBI for screening. The 6,000 number difference is the number of cards we returned to the members for illegible prints, incomplete information, etc., which were not returned to us. We know we lost 6,000 members who simply would not go to the trouble to get fingerprinted a second time or return corrected cards. This does not include the thousands who simply decided it was too much trouble and dropped out of the program.

Of the 55,000 cards sent to the FBI, some 3,600 were "hits," that is, they had records of some sort on file at the FBI. Offenses ranged from DUIs and youth misdemeanors by currently responsible citizens to rape and first degree murder. Out of the 3,600 records, 122 were determined to be unfit for membership in Civil Air Patrol—70 of these were for sex offenses. We were obviously gratified to identify this number of potential child abusers. The unknown, of course, is the number of sex offenders not identified because they elected not to be members rather than risk identification. Unfortunately, they may have gravitated to other youth organizations which do not yet have access to criminal records.

On the downside, the FBI fingerprint screening program caused a significant loss of membership in both adults and cadets: the cadets, because of the increased dues, and the adults because of that and other reasons such as privacy. Both the membership loss and the uninsured exposure caused CAP's Board to seriously consider disbanding the cadet program. But they made the decision to retain the cadet program and attempted to seek means of improving membership screening techniques and established relationships with other youth programs facing similar problems.

The Boy Scouts, in particular, were of tremendous assistance, to the extent of sharing their very excellent video training tapes on child sexual abuse. These tapes are now an integral part of CAP's training programs. Our collaboration with the National Assembly's Task Force has also been invaluable in identifying problems and seeking remedies for our common problems. The Assembly has been a true leader in identifying screening issues and methods.

At this point, we would like to make some specific comments on the proposed legislation. Section 3 "Background Checks," when implemented, will for all practical purposes establish what lawyers call a "standard of care" for the business of child care. That standard will apply to volunteer organizations as well as for profit. The problem is that the legislation will make FBI checks available, but it will not provide funding for the organizations to pay for those checks. The first year of FBI services for CAP was free. Then, Congress required the FBI to charge users. The $17.00 charge per record was ultimately funded from Congress because of CAP's other federal activities, such as counter-narcotics missions. It now costs $160,000 per year and that only covers new members. Other youth organizations or child care providers will have to pay $23.00 per record according to current fee schedules.

Some experts say all members should be rescreened every five years, but CAP has yet to adopt that requirement. Other volunteer organizations may well be unable to pay for obtaining these records. Yet, if they do not avail themselves of the information and a convicted sex offender molests one of the children, it will simply put them out of business. In a phrase, the legislation is establishing a standard that organizations cannot afford to ignore and may not be able to afford financially.

Also, CAP urges that the records on offenders be expanded to include arrests. Our experience with FBI records has been that some sex offenders have arrests that have no disposition simply because the family didn't want to press the case. If records are to be available, make it complete with arrests. Judgment by those reviewing them will be the key to using them correctly.

We also urge the Committee to consider including a provision for youth organizations to freely exchange lists of adults excluded from membership because of sexual misconduct, particularly with young people. Experts will tell you that pedophiles will go from one youth organization to another. Legal considerations have to date made this impractical. If the Scouts have identified a pedophile, it makes no sense not to have a free exchange of this information to keep them out of other organizations.

The insurance consequences of this legislation and of the whole area of sex offenses with children should be examined very closely by the Committee. The coverage term is "SAME" which stands for Sex and Molestation Exposure. The plaintiffs' bar has used the legal theories of "negligent employment" and "negligent retention" to make large claims against youth organizations which have experienced a molestation case involving a volunteer or adult employee with a child in their care. The emotions of these cases have resulted in multi-million dollar awards for children and their parents—not against the molester, but rather against the organization that somehow should have known about him or her. Not only criminal records are used to prove that knowledge. These large awards have convinced many large insurers that this risk should be excluded from General Liability coverage. Coverage, if it exists today, rests in the "specialty market" with high self retentions, i.e., deductibles. The legislation establishing the new standard of care and the insurance market's withdrawal of coverage may drastically affect many organizations' ability to continue to provide child care at all. Without insurance coverage, individual volunteers may not be available. It is clear that large organizations such as the Scouts, Big Brothers/Big Sisters, and local church youth groups would be attempting to serve.

Civil Air Patrol has been advised that it will lose its SAME coverage effective in December 1993. Unless replaced by some company, we will again face the issue of continuing the cadet program.

Another problem with screening in many organizations is timing. Civil Air Patrol deals directly with the FBI and it customarily takes from 45 to 60 days to receive responses to our fingerprint requests. While this works, after a fashion, for Civil Air Patrol, it would not be practical for many youth organizations using volunteers for short periods, such as Little League teams, YMCAs, and youth camping groups.

Again, we support this legislation and hope these comments provide some useful suggestions for changes as it makes its way through the Congress.

Thank you again for the opportunity to provide this testimony.

Mr. EDWARDS. Yes, we would appreciate hearing from Ms. Williams.

STATEMENT OF RENOVA WILLIAMS, DIRECTOR OF PERSONNEL, CIVIL AIR PATROL, MAXWELL AIR FORCE BASE, MONTGOMERY, AL

Ms. WILLIAMS. Mr. Chairman, we do appreciate the opportunity to be here. And I feel a particular appreciation for what you are doing in that when we started wrestling with this problem of criminal records screening back in 1986, 1987, we felt lost. We were almost like a voice in the wilderness.

We didn't have anywhere to go. And it was through the collaboration of some of the youth organizations that we found that they, too, face similar problems. And, of course, we made what I consider some very difficult decisions as an organization.

We predicted, and rightly so, that—we projected membership losses, significant membership loss as a result of our implementing the criminal records check. What this meant to our organization, which is already a small organization, we went down from some 73,000 members to—we stand at 55,000 at this time. We never quite recovered. There are other reasons. We experienced some other things like recessions and other reasons for membership losses, but in particular, we could correlate some of our losses of volunteers with the implementation of this check.

Our organization said, we believe that we have to make a tough decision, but we need to save our cadet program, our youth program. With that in mind, that decision was made. We have paid for that decision membershipwise, if you would.

Some of our volunteers are good people. They are people that wanted to help the children and they wanted to volunteer and, frankly, at the time they were offended at being asked to submit to this. We took upon ourselves an extensive education campaign to explain to our membership. And now they are beginning to see the things that we were talking about in 1988, you are discussing here today.

It took us a number of years and a number of very difficult decisions, especially when we are probably faced with losing insurance and not knowing if we can keep our cadet program. But we were able to do that.

We tried to be a good customer to the FBI because we recognized that they took us on and we are very fortunate to have access through that, not just because of our youth-serving role, but because of some of our other Federal assistance roles. But in so doing, it takes us typically 45 to 60 days—and we are a paying customer. Those are with user fees—to have a turnaround. We have been to the FBI headquarters and we have seen the workload and their challenges and we know what they are going through. We try to understand; to be a good customer to them.

But at the same time, from the time that a fingerprint card is processed out in one of our communities, it is sent to our national headquarters for review to make sure that it is legible and we can give it to the FBI in a form that they require, and we take it from our headquarters in Montgomery, AL, and return it to the FBI; it could be a good 45 to 60 days.

This works for Civil Air Patrol after a fashion in that ours is a long-term membership, but some of these organizations have a short-term membership and perhaps it would not work for them at

all because by the time that is received or returned to them, their need would have expired.

These are some of the things that I would like to leave with the committee. We appreciate your work so much because we have been doing this for some time now. We need to let you know that well-intended, good volunteers simply dropped out of the program. And keep in mind they didn't have to pay the user fee. That was paid for them.

So if you could imagine the Scouts and some of the other organizations if they had to pay the user fee, there could be a more significant loss of membership. We appreciate Congressman Schroeder's efforts in this area and all of the committee's pioneering what we consider to be a problem for a long, long time.

Mr. EDWARDS. We thank all members of the panel. They have provided us with some valuable information and suggestions.

Mrs. Schroeder.

Mrs. SCHROEDER. I thank you, too. Mr. Swann, you are absolutely right. This is a baby and we need to see how it grows.

And we know it is not the whole solution to this terrific problem. But your discussion about the insurance risk, I think is a very serious one. We would certainly hate to see voluntary agencies shut down.

Has anybody ever communicated with insurers?

Would this type of legislation or this type of work at the national level be any way that they could start reinsuring people?

I mean is there anything that we could do to lessen the risk or the exposure they are feeling?

Colonel HANDLEY. Mrs. Schroeder, we have talked to a number of insurers. We are in a position of offering a problem without a resolution. But the general liability market simply didn't know how to handle this risk.

It is not an automobile accident with so many statistics to it. It is too emotional and the jury verdicts range in the multimillion-dollar area. And many of the underwriters simply don't know how to evaluate the risk. The general liability market is withdrawing.

The specialty market is to a certain extent remaining. But if a youth organization has a verdict, you can almost count on a withdrawal from the market from your coverage the following year unless you are willing to accept the first $10 million of coverage inside, which we are not, or some type of high deductible.

So I don't know the answer. But it is definitely with the bill establishing a level of care or a standard of care where youth organizations had better check the records, or if they don't and an individual has an offense on the record, why the punitive damages are almost certain to follow if they are very difficult cases.

Mr. SWANN. If I may, I would like to say that from our perspective at Big Brothers and Big Sisters we find that not to be the case. Our insurance carrier reviewed our policies and standards throughout the country and is satisfied with our procedures. And we have received a rebate in terms of the cost of our insurance.

So I would offer that while the insurance companies will take a very hard and long look at the organization and the liabilities, certainly, the policy, our standards and practices and how you operate

and proceed from a grassroots level all the way to a national office has a great deal to do with that.

And as strong a measure as we could have from Congress in terms of a bill to protect children, it is only going to be as strong as the reporting mechanisms that we have at our individual agencies. If our agencies have cases of child abuse or neglect within our organization and do not report it, then it doesn't matter what kind of records we keep or what system or how much money we have in place to carry out this goal. If we don't report it, then no one knows.

In our organization, the average age of our volunteer is 35 years old. And we have a lot of people in the service who are involved. That means they are doing a lot of traveling, whether for professional reasons, they decide to move, get married, change their life, they cross State and county lines and they move on. And you have to have a system of reporting that allows you to have that.

So it does begin with that local agency and if it is not a strong policy at the local executive director, those volunteers do not report any incidents to the State social services or to legal authority. If it gets to that point or to our own national office, then it is a failed program.

So we believe that what we need is a strong program that the Government supports and stands behind. And we need to ensure that each agency is doing more than their share to make sure that the system is in place.

Mrs. SCHROEDER. You are absolutely right.

Mr. EDWARDS. Has your organization been sued?

Mr. SWANN. Our organization has been sued. As I stated before, one of every six volunteers that come comes through our door becomes a Big Brother or Big Sister. Some have settled and some have gone through the entire process in the court and we have lost some of those, but we still continue to get volunteers and we continuing to grow.

Colonel HANDLEY. If I may respectfully disagree with Mr. Swann.

I think if the committee would look into the insurance market itself independently, just ask the general questions of the marketplace about the same risk, I think you will find what we are suggesting is accurate; that—I mean, CAP is considered one of the forefront people in the fingerprint national screening program. Very aggressive.

And we simply have a terrible time in convincing underwriters that with the youth program we have, that the SAME risk should be covered. Many of the carriers will give you a $25,000 token coverage just so there is no discrimination issue involved in issuing policies, but that is nothing in the way of coverage.

And then there is the other thing. Perhaps a certain level of premium you might be able to insure this risk, but out of CAP's $1.4 million dues revenue, the insurance liability program takes almost $800,000 of our revenue as it is and part of it is for our aircraft fleet, but the other half is for the general liability. So we simply can't afford the risk any worse than it is.

Mrs. SCHROEDER. That is very interesting. And the Boy Scouts don't have this problem and don't think that the fingerprinting is

necessary? I mean, how have you been able to screen and avoid this problem?

Mr. POTTS. The Boy Scouts has always encouraged organizations, like churches, to choose members in their community, members in their congregation, members who they know. Most of these members, and by far the majority of these members, have kids that are in the program. They are mothers and fathers who are going through the program with their youngsters.

We have an application form that asks for references. We have an application form that requests to know where you have lived over a certain period of time and who you have worked for. But we do not, under most circumstances, require that individual to get a fingerprint check.

In fact, in most States, you can't just walk down to our station and get one of those. So we use—we know the leaders that we are selecting. They come out of the community they are serving in. They fill out extensive background applications, and are chosen in that matter.

With regards to insurance, we think the insurance market is very spotty. There are companies which are pulling out.

I am not an expert and up on the minute on knowing what companies are writing and what companies are not writing and I can't give you very much information on that; I am sorry.

Mrs. SCHROEDER. Do you have a profile of what you think is a trustworthy volunteer that has worked for you and has not caused any problems? I mean, you can figure this out without any help?

Mr. POTTS. Unfortunately, experts have told us that there is no profile, there is no way in advance that you can be assured.

Mrs. SCHROEDER. That is what they have told us, too. I thought maybe you have found the key to unlocking all of this.

Mr. POTTS. We also rely on our training program as I talked to you about. There are going to be some people—pedophiles may have children, may be married. People who we would like to get into our leaders would come out of the community and would be known in the community, would have roots in the community, would be married and would be fathers of kids in the program. Those are the people who primarily that we have.

But there are going to be some who do get into the program. And the education program that we have really cooperated on, I mean have really pushed in the last several years, goes directly to kids.

We try to seek empowerment to children so the children know what's happening to them, so that the children can spot the allurers. We try to teach parents how to protect their kids from child abuse and we talk to volunteers; we have programs for volunteers.

So, we try and protect, as I am sure all of these organizations do, we try and protect the people who are in the program by empowerment should a pedophile get into the program.

Mrs. SCHROEDER. Very interesting. Again, I thank the panel, and consider the window open. Any ideas that you have for what we can do to make this more usable or better or more accessible? And I think your point about the local agency doesn't follow through, it never works. So we have to find a way that we are working from the top-down and the bottom-up and everywhere in between.

Thank you very, very much.

Mr. EDWARDS. I thank you all very much, also.

You have not only been splendid witnesses, but you have given us some valuable suggestions. We are going to go over these suggestions, I will with Mr. Hyde and counsel and the other members of the subcommittee, and we will not necessarily accept all of them. Some of them will be a matter of committee decision.

But the bill will be marked up and approved in the next few weeks. We hope, as I said in my opening remarks, that it will be a part of the crime bill that is being presently written. If it is not, or if something happens to the crime bill and it doesn't make it, we intend to take it to the House of Representatives as a freestanding bill all by itself and encourage our colleagues in the Senate to do the same.

And I know that the President of United States endorses the bill. So we expect to move it along and have it in the Rose Garden ceremony. I hope that all of you come when the bill is signed in just a very few months.

Thank you.

Mrs. SCHROEDER. Thank you, Mr. Chairman.

Mr. EDWARDS. The subcommittee is adjourned.

[Whereupon, at 11:35 a.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING

HARPO, INC.
110 North Carpenter Street
Chicago, Illinois 60607
312.633.1000 Fax 312.633.1111

Oprah Winfrey
Chairman of the Board

HARPO.

August 2, 1993

The Honorable Don Edwards
Chairman
Subcommittee on Civil and Constitutional Rights
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Re: Hearing on the National Child Protection Act of 1993

Dear Mr. Chairman:

I write to express my continued strong support for H.R. 1237, the National Child Protection Act of 1993. I am extremely pleased that the Subcommittee on Civil and Constitutional Rights held a hearing on July 16 to consider the legislation, and I am hopeful that this hearing will lead to the quick enactment of the Act.

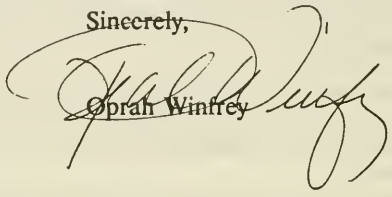
I understand that, although all of the witnesses expressed support for H.R. 1237, some technical concerns were raised at the hearing. To assist the Subcommittee in addressing these concerns, I have asked my legislative counsel in this matter, Governor Jim Thompson, to prepare the attached comments on my behalf. Please call upon Governor Thompson or his staff if they can be of further assistance. I ask that this letter and the attached comments be included in the record of the hearing.

As you may recall, you and I met to discuss a draft of this legislation in November, 1991. I am sure you share my frustration that other issues have prevented Congress from enacting this necessary measure. Although much more needs to be done on the whole range of

child abuse issues and programs, H.R. 1237 would greatly help prevent one of the most preventable forms of child abuse -- abuse outside the home by those already convicted of child abuse or other serious crimes. I urge the Congress to act as quickly as possible to put this important protection in place.

Again, thank you for your unceasing efforts to protect our nation's children.

Sincerely,



Oprah Winfrey

Attachment

**BEFORE THE SUBCOMMITTEE ON CIVIL
AND CONSTITUTIONAL RIGHTS
OF THE COMMITTEE ON THE JUDICIARY
U.S. HOUSE OF REPRESENTATIVES**

COMMENTS ON BEHALF OF OPRAH WINFREY ON H.R. 1237, THE NATIONAL CHILD PROTECTION ACT OF 1993

* * * *

Washington, D.C.
August 2, 1993

Counsel to Ms. Winfrey:

Governor James R. Thompson
Edward F. Gerwin, Jr.

Winston & Strawn
1400 L Street, N.W.
Washington, D.C. 20005
(202) 371-5700

COMMENTS ON BEHALF OF OPRAH WINFREY ON H.R. 1237, THE NATIONAL CHILD PROTECTION ACT OF 1993

On behalf of Ms. Oprah Winfrey, we appreciate the opportunity to provide the Subcommittee on Civil and Constitutional Rights with the following comments on H.R. 1237, the National Child Protection Act of 1993 (the "Act"). These comments address specific concerns voiced at the July 16, 1993, hearing on the Act.

As a general matter, we note that many of the specific concerns raised at the recent hearing -- such as the overall accuracy of criminal records and the availability of insurance -- involve matters beyond the scope of the proposed legislation. Although H.R. 1237 will provide incremental help in addressing these difficult problems, Congress must also undertake broader efforts to address these important and longstanding issues. In the meantime, Congress and the Administration must work to implement the Act in the current environment. Our nation's children should not be subjected to preventable instances of child abuse.

I. The Accuracy of Criminal History Records

At the hearing, the Federal Bureau of Investigation and others expressed concern over the accuracy and currency of criminal history records. In particular, it was noted that a substantial percentage of criminal records lack up-to-date disposition information.

The concern with the accuracy of background check records is certainly appropriate. In view of the importance of accurate criminal history records for background checks under H.R. 1237 and current statutory schemes, as well as for law enforcement in general, the Federal Government and the states should devote the resources required to update and improve these important records.

Inaccurate or incomplete criminal history records could have serious consequences for those individuals whose backgrounds are searched. H.R. 1237, as currently drafted, addresses this concern by establishing strong protections for the individual. The Act includes detailed privacy provisions and an expeditious procedure to permit individuals to challenge and refute inaccurate or outdated information in a background check.

The lack of current disposition information on many criminal history records may unduly narrow the information available for background checks if such checks are limited solely to convictions. Consequently, the Subcommittee should consider amending section 3(a) of the current bill to permit background checks to include arrest information.[1/]

The well-being of our nation's children requires the prompt implementation of a nationwide criminal history background system and concurrent efforts to improve the accuracy of criminal records. As current state experience has shown, improvements in background check systems -- even with the current systems of records -- will reduce the number of children wounded and threatened by child abuse.

II. Burdens on the States and Voluntary Organizations

Witnesses at the hearing noted that the Act will place financial burdens on the states and voluntary organizations. The National Conference of State Legislatures noted that the

---

1/ At the hearing, the Civil Air Patrol (the "CAP") supported the inclusion of both convictions and arrests in background checks covered by H.R. 1237. The CAP, which has had substantial experience with a background check program, noted that a pattern of arrests is often a good indication of a potential to abuse children. We support the inclusion of both arrests and convictions as the best means to assure the protection of children.

$20,000,000 which would be authorized to implement the bill would not be sufficient to update the records of the various states. Witnesses from voluntary organizations stated that the Act would burden their organizations if a fee is assessed for each check.

As noted above, accurate criminal records and efficient records systems are required for a whole range of law enforcement reasons. H.R. 1237 provides incremental financial help to improve such records and systems. Other funding must, however, come from other sources. For example, if a firearms background check system is implemented, Congress must authorize and appropriate substantial, additional funding to improve records and systems. We encourage the federal government to work with the states to find the resources to make this program work.

To reduce the financial burdens on voluntary organizations, the Federal and state governments should consider flexible payment requirements for background checks. Those organizations and individuals that are able to pay for background checks should be required to do so. Other organizations, particularly volunteer groups, may find the costs of background checks to be prohibitive. Sliding scales could be implemented to allow certain organizations to pay a reduced rate for a background check. In addition, banks and other for-profit organizations and individuals subject to firearms background checks might be assessed a small fee for each background check. This fee could fund child care background checks for deserving organizations.[2/]

III. Access to Background Check Information

Concern was expressed at the hearing about the privacy implications of providing background check information directly to qualified entities under the Act. As Chairman Edwards noted, however, such information is already provided to banks and similar organizations under current law. Moreover, as noted above, H.R. 1237 contains strong privacy protections.

If, despite these considerations, the Subcommittee believes that background check information should not be shared with qualified entities, an alternative exists. As set forth in the original draft legislation presented by Ms. Winfrey in 1991, qualified entities could require potential volunteers and employees to provide a written summary of any past crimes. This information could then be supplied to the state agency, which would check it against criminal records and either confirm the accuracy of the information supplied or report that a discrepancy existed. The responsibility would then rest with the qualified entity to clarify any discrepancies with the applicant and to resubmit corrections to the state agency. Although this alternative may involve more steps, it ensures the same result -- child protection.

IV. Evaluation of Background Check Information

Some of the remarks made at the hearing suggested that the Act required the state agencies conducting background checks to determine whether an individual should be offered a child care position within an organization. This is incorrect.

As currently drafted, H.R. 1237 leaves to the organization requesting the search the decision whether to offer an individual a position (paid or volunteer). Although many states have specific fitness criteria for narrowly-defined classes of child care workers, the states are not equipped to conduct screening for other purposes, particularly for voluntary organizations. Each such organization must be free to determine, on the basis of many relevant factors, whether an individual would make an appropriate volunteer or employee. In some situations, for example, the entity may determine that a person who has committed a background check crime can, nonetheless, make a valuable contribution to the organization, possibly in a position which allows only supervised time with children.

[2/] A number of voluntary organizations noted that requiring background checks would discourage volunteers from participating in their organizations. We would hope that, by making background checks more routine and by emphasizing the importance of such checks, H.R. 1237 would help prevent the loss of volunteers.

V. Broad Coverage of the Act

At the hearing, Congressman Canady questioned whether the Act was intended to include all child care providers and reach so broadly that it included "sunday school teachers." In addition, representatives of the Boy Scouts suggested that the Act should not cover voluntary organizations.

It is essential that the Act have broad application. The problem of child abuse is not confined to day-care centers. It has crept into every type of child care situation -- public and private schools, summer camps, volunteer organizations -- even church youth programs are not immune from the risk of child abuse. According to Andrew H. Vachss, a nationally-recognized expert on child abuse, predatory child abusers often seek access to children in voluntary organizations. This frightening fact was reiterated at the hearing by the Civil Air Patrol. Child abusers have formed deviant societies whose sole purpose is to locate and infiltrate voluntary and other organizations which allow them unsupervised contact with children.

In considering the broad coverage of the Act, it is important to bear in mind that participation in the Act's background check system is purely voluntary; the Act does not require organizations to conduct background checks. The Act merely makes background checks available to qualified organizations. Sunday schools and Boy Scout troops that believe that they can protect against child abuse without resorting to background checks would remain free to do so. The Subcommittee must assure, however, that the widest possible variety of organizations have the option to seek nationwide background checks.[2/]

VI. Insurance and Liability

A final concern raised at the hearing involved the difficulty some volunteer organizations are experiencing in their efforts to obtain Sexual and Molestation Exposure coverage ("SAME"). According to these organizations, the insurance industry is currently unable to assess the risks of sexual molestation within child care organizations.

Although this important problem goes beyond the scope of the Act, the Act should provide some help in addressing the insurance issue. The Act will ensure more accurate and consistent reporting of sexual abuse incidence, thereby providing insurance companies with a better means to evaluate the risk. In addition, organizations that take advantage of the Act's procedures will reduce their potential exposure for incidents of child abuse.

VII. Conclusion

As Congresswoman Schroeder noted at the hearing, it is currently easier to track stolen cars than to screen for potential child abusers. The National Child Protection Act of 1993 seeks to correct this unfortunate imbalance. On behalf of Oprah Winfrey, we look forward to working with the Subcommittee to resolve any technical concerns and to assure the prompt passage of the Act.

Washington, D.C.
August 2, 1993

Counsel for Oprah Winfrey:

Governor James R. Thompson
Edward F. Gerwin, Jr.

Winston & Strawn
1400 L Street, N.W.
Washington, D.C. 20005
(202) 371-5700

2/ Many volunteer organizations, such as the Civil Air Patrol and Big Brothers/Big Sisters, have already designed and implemented child protection programs which incorporate currently available background check systems. Other organizations should have this option.

Vigilant in the Protection of Our Children or Vigilantes?

Legal Considerations in Drafting Screening Laws and Recommendations for Safeguarding Children In Child Care Settings

Prepared by:
Abby J. Cohen
Managing Attorney
Child Care Law Center
625 Market Street, #815
San Francisco, CA 94105
(415) 495-5498

© 1985 Child Care Law Center,
a special project of the
San Francisco Lawyers' Committee for Urban Affairs

I. Introduction

During the past year, allegations of child abuse, particularly child sexual abuse, have garnered widespread media attention. While statistics gathered nationwide indicate that an overwhelming 82% of child abuse is committed by family members and experts acknowledge the importance of child care in the prevention, detection and treatment of child abuse,[1] most of the publicity has focused on allegations of abuse occurring in child care settings. These allegations have prompted legislators, parents, child care givers and licensing officials to seek more effective strategies to protect children in child care. While few would wish to detract from attention which raises the public consciousness about the seriousness and prevalence of child abuse, nor criticize good faith legislative efforts to protect children, thus far the consequences of media and legislative attention are not all salutary.

Too frequently, the media maligns child care generally, never emphasizing its positive aspects. Such coverage usually discounts or ignores the dedication of thousands of child caregivers who provide an essential service to children and their parents in the face of low wages, long hours and little recognition for the importance and difficulty of their work. Additionally, such coverage also tends to shower guilt on parents who already face conflicts because of the lack of accomodation our society has made for working parents.

Similarly, many legislative responses focus only on screening out criminals or stiffening criminal penalties for offenders. In many states, criminal record history screening has been put into place without the thorough consideration such measures require. Additionally, little attention is given to a cost/benefit analysis of screening. Recent statistics from New York City, similar in result to California statistics, reveal that less than 1% of those screened had prior felony convictions.[2] Most importantly, attention is diverted from measures which are already proven or have the potential to expand and improve child care programs, thereby reducing the risks of improper or inadequate care.

One of the responses to allegations of child abuse in child care settings was the passage of P.L. 98-473. The paper which follows: 1) describes P.L. 98-473, 2) sets out the legal and non-legal aspects which ought to be considered in drafting a national criminal record screening law which complies (and/or goes beyond) the requirements of P.L. 98-473, 3) sets out considerations in developing laws or regulations dealing with employment history and background checks and 4) concludes with a list of recommendations for avenues other than screening to prevent child abuse in child care settings and to provide better regulatory enforcement once child abuse is suspected.

II. P.L. 98-473

As currently written, P.L. 98-473 requires states, in order to obtain their full Title XX appropriation, in FY 1986 or 1987, to have in place by September 30, 1985, procedures, (through law or regulation) to provide for employment history and background checks

and a statute which provides for nationwide criminal record checks. These checks are to be done on current and prospective operators, staff and employees of "child care facilities (including any facility or program having primary custody of children for 20 hours or more per week) and juvenile detention, correction or treatment facilities." No further guidance is given.

III. DEVELOPING A CRIMINAL RECORD SCREENING LAW

A. Why a model statute and regulations are not provided here*

After attempting to construct a model state statute for the national criminal record screening of child caregivers which would be in compliance with P.L. 98-473, it became apparent that this would not be possible for three reasons. The reasons are:

1. DHHS has chosen not to clarify programs and activities to be regulated within the meaning of P.L. 98-473, but has left this to the discretion of the states; (see Federal Register, January 15, 1985 p. 2090).

2. the wide variation among states regarding which child care and juvenile programs are regulated, to what degree and by whom;

3. a desire to distinguish what is required by the law, what is optional but desireable, and what is undesireable.

B. Legal Aspects:

1. Amending existing legislation

P.L. 98-473 requires screening of a variety child caring institutions all of which may not be regulated

---

* The Child Care Law is available, for a fee, to provide technical assistance in the drafting of screening statutes tailored to the needs of individual states and in compliance with P.L. 98-473. Contact Abby Cohen, Managing Attorney, Child Care Law Center, 625 Market Street, Suite 815, San Francisco, CA 94105. (415) 495-5498.

under the same state law. Consequently, states will either have to pass a law amending all of these regulatory schemes, amend each law individually, or if they are fortunate and all forms of employment covered by P.L. 98-473 appear in one law, amend only that. Additionally, they may have to amend the laws in their states governing the state agency which does criminal history checks to authorize that agency to send fingerprints to the F.B.I. and to share information it has, and information it receives from the F.B.I. with the pertinent regulatory agency which will make the employment decisions. *

2. Definition of those programs and providers of care covered

In order to comply with P.L. 98-473, and P.L. 92-544, all staff, operators and employees of defined programs need to be explicitly identified in the statute. Each state must determine what types of child care facilities exist in its state which have primary custody of children for 20 or more hours per week and which programs operate which can be considered juvenile detention, treatment and correction centers. While monies under P.L. 98-473 are limited to the training of licensed or registered providers of child care, operators and staff of licensed or registered child care, licensing and enforcement officials and parents, the definition given for those programs and providers covered in the screening mandate is not similarly limited. At the very least, in the area of child care, a law should cover any regulated (whether licensed, certified, registered or approved) child care program which operates for 20 hours or more per week. Each state also should address the following concerns:

a. whether the statute also should include: public/private schools, foster care and forms of regulated child care which operate for less than twenty hours per week. In addition, when care takes place in a home, consider whether adults (other than the provider) residing in the home should also be screened. This is not required under P.L. 98-473.

b. how it plans to deal with substitutes and volunteers. Depending upon how one defines "employees" under the statute, substitutes and volunteers may be employees or they may not be. Even if they are not considered employees, a state may still choose to screen

---

* It is the author's contention that the regulatory agency, not an operator should be receiving this information and making employment decisions. For reasons why, see section 4d below.

volunteers. California takes a middle ground. Its law provides: "...In determining who has frequent contact, any volunteer who is in the facility shall be exempt unless the volunteer is used to place [sic, replace] or supplement staff in providing direct care and supervision of children in care. ...This section does not apply to adult volunteers or adult staff employed by the applicant on an intermittent basis for less than 10 days per month, provided that these adults are under constant supervision by adults who meet the requirements of this section."

Substitutes may need special provisions so they do not have to be cleared over and over again at different programs. On this point California law provides:

".... For the purposes of compliance with this section, the department may designate a child care resource and referral agency or other agency in each county to maintain a file of criminal record clearances [as previously defined], for individuals employees on a temporary basis by applicants in that county."

c. Unnecessary Duplication: Possible special provisions so that persons like public school personnel who may already have been screened recently (it may be desireable to place a time limit on how long ago clearance occurred) do not need to undergo screening again if they now seek employment as child care providers.

3. Need to cover current and prospective operators, staff, employees

To avoid an enormous deluge of checks to be done when the law becomes effective it is desireable to phase the program in. A recent bill proposed in Arizona does this.[3] When the law becomes effective, hiring of all prospective operators, staff and employees will be conditional on clearance but current operators, staff and employees will be checked when their own license or their employer's license is up for renewal.

4. Adopting a clearance procedure
Beyond defining who is to be checked, the statute should:

a. specify when checking will be done. When a prospective operator is to be checked, fingerprints should be submitted at the time of application for licensure. Depending on the length of time required for processing, states may either issue a license upon clearance, or grant a provisional license which becomes a regular license when clearance occurs. The statue should also specify if another check is requires when a license is to be renewed. (California's check is once only). When persons being checked are prospective staff or employees, the statute should require that these persons submit fingerprints to the regulatory agency within a certain number of days after they begin work (i.e. 20 days) and

state explicitly that permanent employment will be contingent upon obtaining clearance. [In the case of state and employees, clearance can either be required at the time of new employment or a clearance could be issued and kept on file at the time of the first job and could last for a specified period].

b. Authority to conduct the criminal records check

The statute should require notification to the applicant that a criminal record check will occur, explicitly authorize the regulatory agency to submit the fingerprints to the state justice agency, and further empower that agency to submit prints to the F.B.I.

c. What will be considered necessary to obtain clearance

Each statute should clearly set forth the grounds upon which employment can be denied. It is unwise to leave this to guesswork or "guidelines".

(1) Convictions, not arrests for specified crimes should be used. Use of arrest data is not advised, for a number of reasons. First, because minorities are arrested at a disproportionately higher rate than whites, automatic disqualification for employment based on arrests without convictions is violative of Title VII. (See George v. Litton Systems, Inc. 472 F. 2d 631 (1972)). Secondly, arrest data is notoriously inaccurate. Misinformation may be compounded, never leading to a conviction, but resulting in a criminal history record a mile long. Just recently, a "Michigan man filed suit charging that he was wrongfully arrested five times in less than 14 months after an arrest warrant for a man using his name was placed in the national computer system of the Federal Bureau of Investigation."[4] Conviction" should include a finding, verdict or plea of guilty or a conviction following a plea of nolo contendere. The names of crimes will vary, state to state, but should include:

(a) sexual abuse, assault, exploitation, (both against a minor and adult)

(b) incest

(c) rape

(d) murder

(e) kidnapping

(f) contributing to the delinquency of a minor

(g) felony offenses involving narcotics

(h) violent felonies (armed robbery)

(2) The statute should also state that conviction of crimes of the same nature in other states and jurisdictions are also grounds for denial of employment.

(3) States should provide a mechanism for discretionary review if they consider every kind of criminal conviction. A good example of this type of system is California. Because California looks at all convictions other than minor traffic violations, it provides that an exemption from disqualification may be granted to one convicted of crimes other than child abuse if the director [of the state licensing department] has substantial and convincing evidence to support a reasonable belief that the applicant [and the person convicted of the crime, if other than the applicant,] are of such good character as to justify exemption. To make this determination the regulations consider:

1. The nature of the offense committed.

2. Time elapsed since the offense was committed.

3 Number of offenses

4. Circumstances surrounding the commission of the crime that would demonstrate the unlikelihood of repetition.

5. Activities since conviction, such as employment, education or participation in therapy, that would indicate rehabilitation.

6. Character references

7. Certificate of rehabilitation from a court.

However the state should choose to consider convictions, it should balance the risk to children versus the employment rights of persons who have

criminal conviction records. Simply stated, conviction data should only be used if it is relevant and recent.

d. Who makes the decision

The statute should clearly specify who will make the hiring/termination decision. In the author's view, it is essential that the determination be made by the regulatory agency and not by the child care program operator or provider. The reasons are:

(1) expertise. An agency reviewing numerous criminal history records is in a better position to pass judgment upon whether termination or hiring is warranted.

(2) liability exposure. The state, not individual programs, is in a better position to absorb the cost of potential lawsuits.

(3) decision making by the state obviates the need for programs to develop confidentiality procedures for the receipt of criminal history information.

(4) Keeping irrelevant criminal history record information out of the hands of employers eliminates the potential for bias against those who were wrongfully arrested and ex-offenders who have been rehabilitated.

(5) provides for greater uniformity throughout a state on what is a minimum standard for employment.

(6) since the state will have to do the clearance on individual operators who have no "director" above them anyway, it makes little sense to divide the same task between the regulatory agency and child care operators.

(7) since a model statute should include an opportunity to appeal an adverse employment decision it makes sense that an agency with appeal procedures already in place (the regulatory agency) should handle appeals. It then makes little sense to divide the tasks of making employment decisions and rendering decisions on appeals.

e. Due process- notice and an opportunity to be heard

Once a determination is made, applicants should be advised of the decision in writing, whether

favorable or adverse. (If staff and employees are screened, staff employees, and employers should both be notified). If the decision is not favorable, the reasons for termination or unwillingness to hire should be spelled out. Finally, applicants should be informed of how they can appeal the adverse decision-- to what agency, within what time frame, etc. Any hearing should be conducted with the usual array of due process safeguard granted in other administrative hearings.

C. Non-legal aspects

Costs: Costs for doing the national criminal records checks (F.B.I.) are estimated to be $12; state screening costs must be added to this figure. By statute or regulation, states should specify who will pay these costs. For example, in California, no fee is charged for fingerprinting or obtaining the criminal record of persons who care for six or fewer children. Additionally, as a procedural matter, screening should occur at the state level before prints are sent to the FBI; if the person is found unacceptable at the state level this obviates the need, and resulting expense, of doing the national screening.

D. APPROVAL

Finally, any statute which intends to utilize the F.B.I. for national criminal record checks must be approved. Approval should be obtained before your bill goes to the legislature for passage. Contact Mr. William H. Garvie, Identification Division, FBI, Washington, D.C. 20537, (202) 324-5456.

IV. Background Checks and Employment History

In addition to the national criminal record screening law just outlined, states wishing to receive their full Title XX appropriation must also have in place laws or regulations which provide for background checks and employment histories. Again, the DHHS has given no guidance as to what is appropriately within the

scope of a "background check" or "employment history", how these activities are to be undertaken, or by whom. Most of the considerations outlined previously will be equally relevant in drafting a background check or employment history law. Some measures states might wish to consider are:

A. Attestation To "Clean" Criminal History

States can require that those being screened also sign a declaration under penalty of perjury that they have not been convicted previously of crimes specified by the state.

B. Checks of Dependency Determinations and Parental Terminations

States can require that persons who as parents or guardians of a child have had their parental rights terminated or whose children have been adjudicated to be dependents of the state shall not be approved as operators, staff or employees.

C. Checks of Licensing History

States can also require that checks be made of any previous denials, revocations, or refusals to renew which occurred in operating facilities for dependent persons (children, elderly, etc.).

D. Objections To Use of the Child Abuse Registry

Some states have chosen to use their child abuse registries for screening. Without going into an extended discussion,* this author contends that registries should not be used for screening because they were developed for intra-family abuse, are frequently ambiguous in defining whether conduct is to be

---

* An in-depth examination of this topic is available from the Child Care Law Center. Please request "Use of Statewide Central Child Abuse Registries for Purposes of Screening Child Care Workers."

included in the registry, and if so, at what level or classification. Additionally, they generally have no procedures to correct incorrect findings. The author's comments are limited to use of the registry for screening purposes, and she passes no judgment on the use of registries once a complaint or allegation has been made against a child caregiver. However, there are too many troublesome facts about child abuse registries for them to be appropriately used by persons other than law enforcement or child protection personnel.

E. Employment History

Employment histories should include verification of educational credentials, and verification of previous places of employment.

F. Character/Employment References

References by previous employers is critical. Reliance on friends, relatives and the like should be deemed insufficient.

G. Probationary Period

In addition to the measures suggested above, it is wise to institute a probationary period to determine a child caregiver's suitability. Child caregivers should be informed of the existence of the probation and grounds for termination.

V. Safeguarding Children in Child Care Settings: What Can Be Done? Some Recommendations

A. Licensing

1. Increase licensing's role in parent education re: licensing requirements, provider communication, questions to ask, where complaints can be made, indicators of child abuse, community resources for learning about abuse and helping victims of abuse etc. This should include use of the media, as well as other methods and materials.

2. Improve complaint process:

   -institute toll free numbers

   -speed response time and resolution

3. Train licensing personnel re: investigation, gathering and preserving evidence, identifying child abuse.

4. Make reasonable parental access to a facility a licensing requirement.

5. Make availability of parent roster to licensing a licensing requirement. Parents should also have access to a roster, although parents can also request their names be deleted from the list circulated to other parents.

6. Create a separate division or department to deal with child care so its unique nature is understood; within this division separate licensing and enforcement functions; beef-up enforcement division so response time is improved-- which often means more resources for the legal department.

7. Require child abuse reports to be cross-reported to licensing and vice versa.

8. Provide intermediate sanctions (fines)for physical plant and other non-endangering situations so that providers are required to come into compliance or face monetary sanctions.

9. Timely notification of parents and R & R when a license is suspended or revoked; development of policies for notification when administrative action is not as grave as suspension or revocation.

10. Publicize revocations/denials, non-renewals of licenses regularly and locally; publicize injunctions.

11. Add injunctive relief (to close down the facility) to standard revocation orders.

12. Develop method for placing licensing revocations on criminal history records.

13. Provide for provisional licensing status- with a statutory ending period.

14. Develop formal methods of complaint information sharing between:

(1) child care, residential care, foster care, etc. (be certain to check if they have had a license before which has been revoked, denied, etc.)

(2) law enforcement, protective services, licensing.

(3) state, county, local officials

Require all these sources of information to be checked out before issuing license.

Keep records when licensee surrenders license.

15. Requirements for employees in centers- check at least three references thoroughly before hiring; require a probationary period after hire for evaluation.

16. Require protection for workers through non-retaliatory provisions for child care workers who report licensing violations.

17. Require licensing to document and study complaints for purposes of regulatory reform.

18. Interagency agreements between licensing, protective services, police, and district attorneys should be developed so investigatory responsibilities are not duplicated, impeded, or left unperformed. Possible joint investigation by CPS and licensing.

Child Protective Services/Law Enforcement

1. Staff of these agencies should be trained not only in identifying child abuse, but should understand the difference between investigations conducted in the home and those in a child care setting. Preferable use of child protective worker over police, and if police used, may want plain clothes in unmarked car.

2. Notification to licensing if CPS and law enforcement have complaints of child abuse in a child care setting.

3. Development of procedures for investigation of child abuse in child care, i.e. if parents are not targets of investigation, interviews with children should be conducted at home, or at the very least, parents should be notified before a child is interviewed.

II. Government/Private Resources

A. More resources devoted to:

-provider training in the areas of emergency preparedness, child development, licensing requirements, child abuse identification and reporting;

-adequate subsidies for low-income parents so they have choices; -increase provider wages so that high quality staff can be attracted and maintained;

-development and maintenance of R & R

B. Resource and Referral

-establish complaint policies

-develop choosing child care programs, publications

-develop means of training parents to engage in on-going monitoring of care

-help in training providers regarding child abuse and develop directories of community resources they can turn to,

-encourage parents to listen to kids- what to expect- normal separation anxiety vs. symptoms of trouble

-promote providers/parents communication on a regular basis about concerns

-promote positive media coverage of child care

C. Parents

-learn about licensing requirements

-learn where complaints are to be made

-obtain roster and talk to other parents of children in care on a regular basis

-listen to kids

-advocate for more resources for child care

-visit programs and see and judge for themselves

-advise R & R and licensing if programs they have been referred to are rejected on the basis of substandard conditions

D. Employees

-learn licensing regulations and work with program to meet; report licensing violations

-advocate for in-service training opportunities, opportunities to learn about child abuse prevention, detection and treatment and provider rights and responsibilities under the child abuse reporting law.

-learn curriculum for teaching children about abuse, learn about community resources available to interested persons and victims.

E. Children

-teach about abuse; how they can respond; should be taught by trained employees.

FOOTNOTES

1. See for example the testimony of June Solnit Sale, Director UCLA Child Care Services (June 18, 1984), Dr. Vivian Weinstein, Associate Professor of Pediatrics, King/Drew Medical Center (June 18, 1984), Anne Cohn, Executive Director, National Committee for Prevention of Child Abuse (March 12, 1984) and Dr. Vincent Fontana, Medical Director and Pediatrician-In-Chief, New York Foundling Hospital Center for Parent and Child Development (March 12, 1984) before the House Select Committee on Children Youth and Families. (1984)

2. New York Times, January 18, 1985

3. Arizona House Bill 2002, introduced January 14, 1985.

4. "Victim Files Suit Over Error that Led To 5 Arrests," New York Times, February 12, 1985.

BIG BROTHERS/BIG SISTERS OF AMERICA®

Summary:
ABA Study of Child Sexual Abuse Allegation Reports (1982 - 1991)

Jane Nusbaum Feller
The ABA Center on Children and the Law

Daneen G. Peterson, Ph.D.
Research Consultant, BB/BS of America

and

The BB/BSA Child Sexual Abuse Prevention Staff Work Group

FEBRUARY 1992

230 North Thirteenth Street • Philadelphia • Pennsylvania • 19107 • (215)567-7000 • FAX (215)567-0394

PREFACE

This report is a summary of the data from a content analysis of sexual molestation reports filed with Big Brothers/Big Sisters of America (BB/BSA). The analysis was carried out, under contract with BB/BSA, by the American Bar Association's Center on Children and the Law, and covers allegation reports filed over the period 1982 to 1991. The results were reported in a document entitled: Analysis of Molestations Allegation Reports The reports included in the analysis are primarily allegations and in reviewing the findings, the following perspective should be kept in mind.

In the early 1980s, Big Brothers/Big Sisters of America made the decision to collect specific information about alleged incidents of sexual molestation occurring between a volunteer Big Brother or Sister and children served. The information was to be collected as BB/BSA learned of such incidents from its affiliated agencies. It was anticipated that by doing so, more could be learned about pedophiles that would hopefully put BB/BSA in a better position to provide guidance to its agencies to "screen out" pedophiles from volunteer applicants.

It was understood that the case-by-case information, once gathered, would be confidential and be kept by a national board appointed legal counsel. The task of gathering the data was assigned to members of the national organization's field staff.

These field managers were to obtain the information from telephone interviews with BB/BS agency directors after being informed of an alleged sexual molestation incident. While notifying BB/BSA of such incidents was not mandatory, the practice was soon generally accepted because executive directors were eager to obtain guidance on how to handle case records and terminate matches, as well as how to respond to their staffs, boards of directors, other volunteers, and the media.

Over the years, several different versions of the sexual molestation forms were designed and used, in an attempt to obtain more definitive information. These reporting forms were not shared with BB/BS agencies and the reports themselves continued to be privileged information between the field manager and BB/BSA's legal adviser, and remain so to this day.

In 1986, the Crisis Management Guide was distributed to agencies. This guide encouraged agencies to report alleged sexual molestations to BB/BSA, with the reporting often including other related incidents, as the following summary indicates.

Because the information was gathered initially by telephone inquiries with executive directors who may not have had the specific information needed for complete reporting, it was not always possible to obtain all of the relevant facts at the time of the initial calls. Furthermore, some of the incidents happened many years before coming to light and in many cases, because of the time that had passed prior to the incident being revealed, neither the alleged perpetrator nor the victim was still known to the agency.

Since the report forms had not been distributed to BB/BS agencies, executive directors were not informed as to the information BB/BSA needed in the case of an alleged sexual molestation. Therefore, such questions as date of initial incidents, frequency and location of molestations, and other such descriptive information, would only be known by the agency if the child and/or parent had been interviewed prior to the telephone inquiries.

It should be noted that during the years covered by this data, BB/BSA was engaged in a range of programmatic activities that were designed to deal directly with the issue of child sexual abuse. Some of the materials developed during the late 1980s and early 1990s included the adoption of Standards and Required Procedures for ONE-TO-ONE service (1986); Program Management Manual (1988); Agency Self Assessment and Evaluation (1988); EMPOWER: Child Sexual Abuse Education and Prevention Program (1989); and the design of professional staff training institutes, particularly for caseworkers.

Also, during this period of time, BB/BSA provided a national leadership role to draw the attention of other national youth organizations to the issue of pedophilia.

The data summarized in the following report, however, represents the first systematic content analysis of the different forms that were used to report alleged sexual molestation during the nine year period. It provides a closer look at the perpetrators and victims and the assumed related circumstances. This first attempt, while inconclusive, indicates that Big Brothers/Big Sisters of America is on the right track, and directs the organization to design an even more useful reporting form, which should be shared with BB/BS agencies so that the staffs are aware of relevant data needs.

Dagmar E. McGill
Deputy National Executive Director

February, 1992

SUMMARY: ABA STUDY OF CHILD SEXUAL ABUSE ALLEGATION REPORTS (1982-1991)

Jane Nusbaum Feller
The ABA Center on Children and the Law

Daneen G. Peterson, Ph.D.
Research Consultant, BB/BS of America

OVERVIEW AND PERSPECTIVE

Over the past two decades, it has become increasingly apparent that child sexual abuse exists in our society and that the sexual abuse occurs in a variety of settings and is perpetrated by many types of people. Both in the media and in academic circles, intrafamilial abuse has been a major focus. Sexual abuse in day care (and in other institutions such as schools, residential treatment centers, and foster homes) has also received significant attention, particularly from the media. However, in the context of volunteer youth serving organizations, child sexual abuse has not been widely studied. Apart from some negative publicity for these organizations whenever an allegation of this nature surfaces, little has been written on the subject, and even less actual research has been conducted. This analysis of BB/BSA molestations allegations reports is a first step in that direction. This summary covers 304 written reports of allegations encompassing the years 1982 to 1991. Unfortunately, a major problem effecting the interpretation of the data was the lack of documentation or "missing data"! (See Table 1 below).

TABLE 1 - PERCENT OF MISSING DATA BY CATEGORY

Categories	%
Affiliate's identifier (last 4 digits)	50.0
Affiliate's locality type	29.3
Civil outcome	85.5
Criminal outcome	31.9
Criminal records check (Federal)	58.9
Criminal records check (Local)	52.6
Criminal records check (State)	54.9
How perpetrator referred to program	65.8
Location of incident(s)	54.3
Month incident(s) occurred/began	70.1
Number of incidents	26.6
Number of months into match incident occurred	44.7
Number of supervisory contacts with perpetrator	73.0
Number of supervisory contacts with victim	62.2
Perpetrator's age at time of incident	40.8
Perpetrator's criminal convictions (other than from records check)	53.3
Perpetrator's criminal history (other than from records check)	82.2
Perpetrator's educational background	67.1
Perpetrator's employment status	54.3
Perpetrator's length of residence	67.1
Perpetrator's marital status	31.9
Perpetrator's occupation	31.9
Perpetrator's race	76.6
Perpetrator's volunteer or employment experience with children	47.7
Source of allegation to affiliate	25.3
Time of day of incident(s)	67.4
Victim's age range (at date of incident)	33.6
Victim's age (at date of incident)	53.9
Victim's age (at date of report)	28.9
Victim's grade (at date of incident)	53.6
Victim's grade (at date of report)	70.1
Victim's primary caretaker	42.2
Year incident(s) occurred/began	38.8

Part of this troubling lack of information can be attributed to the difficulties in ascertaining

particulars in any child sexual abuse case. It is well known that cases are notoriously difficult to prove in court (civil or criminal) due to the lack of evidence. Two reasons for the lack of evidence are the involvement of sexual activity and in particular sex involving children. In addition child molestations usually occur outside the purview of any witness other than the child. Moreover, the child often has difficulty disclosing the abuse for a number of reasons. He or she may: have been threatened to keep quiet; feel guilty or embarrassed about the abuse; be traumatized so as to have repressed the abuse; be too young to verbalized his or her experience or any combination of the above. Thus, the events BB/BS has attempted to document, by their very nature, defy comprehensive documentation.

Of the reports with information available about the location of the incident (N = 215), 82.8% took place in urban locations with: 41.9% of the reports occurring in large urban areas; 40.0% in medium urban areas; 10.7% in rural areas; and 7.4% in suburban areas. In comparison the 1990 Agency Information Database (AID), which contains the Agency Data Survey (ADS) demographics gathered from the affiliates nationally, indicates that 60.8% (n = 209) of the BB/BS agencies (N = 344) are located in urban areas. Of those agencies, there is: 21.8% (n = 75) in large urban areas; 39% (n = 134) in medium urban areas; 29.9% (n = 103) in rural areas; and, 9.3% (n = 32) in suburban areas. Note that the urban agencies as a group serve more children per agency and that rural agencies as a group tend to serve fewer children per agency. These facts could explain the discrepancy between the percentiles for incident location and agency location. What follows is a geographical distribution of the allegation reports:

TABLE 2 - NUMBER AND PERCENTILE OF REPORTS BY STATE

State (N = 304)	n	%	State (Continued)	n	%
California	51	16.8	Arkansas	3	1.0
Florida	38	12.5	Colorado	3	1.0
Ohio	15	4.9	Maryland	3	1.0
New Jersey	14	4.6	Minnesota	3	1.0
New York	14	4.6	West Virginia	3	1.0
Texas	14	4.6	Washington,D.C.	2	.7
Illinois	11	3.6	Hawaii	2	.7
Massachusetts	11	3.6	Idaho	2	.7
Pennsylvania	10	3.3	Michigan	2	.7
Virginia	9	3.0	Missouri	2	.7
Wisconsin	9	3.0	Nebraska	2	.7
Arizona	7	2.3	Nevada	2	.7
Connecticut	7	2.3	New Mexico	2	.7
Tennessee	7	2.3	North Carolina	2	.7
Oklahoma	6	2.0	Oregon	2	.7
Kentucky	5	1.6	South Carolina	2	.7
Utah	5	1.6	Delaware	1	.3
Alaska	4	1.3	Iowa	1	.3
Georgia	4	1.3	Kansas	1	.3
Indiana	4	1.3	Louisiana	1	.3
Montana	4	1.3	Maine	1	.3
Washington	4	1.3	South Dakota	1	.3
Alabama	3	1.0	Missing	4	1.3

The allegations underlying the reports were first conveyed to affiliates from a variety of sources: the victim's parent (30.3%); police (11.5%); a Big Brother or a Big Sister including the perpetrator him or herself (4.9%), the victim (4.9%); agency staff (4.6%); child protective services personnel (2.6%); a relative other than the parent of the victim (1.6%); the victim's guardian (.7%); law enforcement other than police such as the District Attorney's Office (.7%); and the media (.3%). The 'other' category (9.5%) included lawyers, mental health professionals, teachers of the victims, as well as the perpetrators' neighbors, relatives, landlords, spouses, and ex-spouses.

The sources of information for this report came from a variety of documents. Prior to 1987 there was a specific BB/BSA form used to report the sexual abuse allegations. However, the form was inadequate for capturing all the necessary information needed for creating profiles of the perpetrators, victims, and circumstances and was substantially modified in 1987. Other documentation gaps occurred

because some reports were not made on the standardized forms. Those sources included the "Inappropriate Conduct" forms, newspaper clippings, a letter, a memo, a note, or some combination of those. Together the lack of uniformity and the use of inadequate or incomplete forms contributed most dramatically to the **missing data problem** which in turn **limited the interpretability** of these datum.

The distribution by number of matches for those agencies found in the reports (N = 253) was: 8.7% with less than 50 matches; 22.9% with 50-100 matches; 37.9% with 101-200 matches; 25.3% with 201-500 matches; and 5.1% with 501-1000 matches. In comparison the 1990 AID indicated that the match distribution for 417 of the 481 reporting agencies was: 33.1% (n = 178) with less than 50 matches; 25.9% (n = 108) with 50 to 100 matches; 23.5% (n = 98) with 101 to 200 matches; 14.9% (n = 62) with 201 to 500 matches; 2.6% (n = 11) with 501 to 1000 matches.

The reports were processed in three stages: (1) the data was organized into four categories: incident classifications - perpetrators - outcomes (criminal and civil) - victims; (2) the data was entered into a database using a statistical computer program called SYSTAT for analysis; (3) the findings were written up in a report entitled "Analysis of Molestation Allegation Reports". Because of the high percentages of missing information, for a given variable, it will be very important to view all of the data analysis and discussion within the context of Table 1 above. While reviewing the following data also keep in mind that the use of percentiles can be misleading. For example: **In a sample of 100 reports, 30% of which involved multiple victims, 90% of which included a Big Brother or Big Sister, 20% of which were males, equals 5 people.**

INCIDENT REPORT ABUSE CLASSIFICATIONS

The incidents described in these reports may have occurred years before the reports were filed. In some cases the child disclosed the abuse only after therapy, sometimes even as an adult. In other cases the child disclosed the abuse but the agency was not informed until years later. Still other incidents were discovered when the agency heard about a former volunteer's recent misconduct and, after interviewing his or her past Littles (or their parents), found out that there had been abuse in the past.

Virtually all reports were filed after the match was terminated and relatively few identified the date of the incident. Many (38.3%) of the reports did not (or could not) specify even the year of abuse. The incidents with available dates (n = 186) occurred between 1964 and 1991. Only .3% (one incident) was reported for the 1960s, 6.3% (n = 19) for the 1970s; 51.6% (n = 157) for the 1980s; and 2.6% (n = 8) for 1990s.

The attempt to classify the types of incidents alleged was very difficult. A major part of the problem was that the incidents were described in "generic" terms such as: molestation, sexual abuse, sexual contact, sexual exploitation, sexual activities, or sexual misconduct in 35.9% (n = 109) of the reports. Without specific details of what happened it was impossible to identify the type of alleged misconduct. The table below represents the best classifications possible in light of the above ambiguities.

TABLE 3 - TYPES OF SEXUAL ABUSE

Types (N = 304)	%	n
Molestation (non-specific sexual abuse)	35.9	109
Inappropriate sexual touching/genital	14.8	45
Oral sex	9.5	29
Penetration, penile	8.6	26
Inappropriate sexual touching other	3.9	12
Other	3.6	11
Taking sexually explicit photo/video of victim	2.3	7
Exposing victim or having victim expose self	2.3	7
Showing pornography to victim	2.3	7
Masturbation in victims presence	1.0	3
Indecent exposure	.7	2
Permitting another to have sexual contact with victim	.3	1
Missing/Unknown, unspecified, or missing	14.8	45

It is crucial to remember that these groupings often overlap. For example, exposure may be accompanied by the showing of pornography, or sodomy may be combined with other inappropriate touching. This overlap was especially common in reports involving more than one incident. For categorization purposes, the most severe conduct applicable was used. Because the Inappropriate Conduct forms included allegations of physical abuse, employing prostitutes, and making obscene telephone calls, they were included in the "other" category.

In 65.1% of the reports, the location of the incident was not specified. In the reports indicating the location of the incidents (N = 106), 72.6% (n = 77) occurred in the perpetrator's home and the vast majority included showing pornography to the victim. However a substantial portion of the other types of sexual abuse also took place in the perpetrators home. The remaining incidents occurred in the perpetrator's car (4.7%, n = 5), in the victim's home (5.7%, n = 6), on a camping trip (6.6%, n = 7), in a hotel or motel (1.9%, n = 2), in another public place - e.g., a public pool or restroom (4.7%, n = 5), or in another private residence or building (.9%, n = 1), and (2.8%, n = 3) in multiple places.

No real connection emerged between the reports on the location of an incident (65.1%, n = 198 with missing information) and the time of year the incident occurred (38.8% , n = 118 with missing information). It is important to understand that a report may have missing information for location or year or both, which would negate the ability to make any connection at all. Therefore the potential number of reports useful to the analysis would be something less than 45.7% of the indicated available location reports.

Where possible (27.7%, n = 84) , it was calculated how many months into the match the abuse occurred (or began to occur). Most of the incidents happened early in the match. The younger perpetrators committed their offenses slightly earlier in the match than their older counterparts.

Because information about the month of the incident was so scarce (e.g., 70.1%, n = 213 missing), the ability to analyze the data was limited. What little data there was revealed a slightly higher number of incidents in the summer months, particularly in August. There was also no pattern with respect to the time of day because 83.5% of the information was missing or unknown.

PERPETRATORS

From the outset, it should be recognized that not all of the 304 reports involving child abuse occurred within the context of a match. In fact, 25.3% (n = 77) of the reports the perpetrators **were not matched to any of the victims**. These reports included adult perpetrators (91.1%) who were at some time associated with a BB/BS agency. The perpetrators fall into the following categories: Big Brothers (81.9%, n = 249); Big Sisters (2%, n = 6); Board Members (4.9%, n = 15); agency staff (2.3%, n = 7); Little Brothers (1.3%, n = 4); other (4.6%, n = 14); missing (2.9%, n = 9). Some (4.6%) of the perpetrators were never directly involved with BB/BS at all (e.g., the friend of a Big Brother or the husband of a Big Sister).

For those who had been matched at some time the following table lists the number of matches each perpetrator had during their tenure as a volunteer.

TABLE 4 - TOTAL NUMBER OF MATCHES PER PERPETRATOR (N = 304)

Matches	%	n
1	33.6	102
2	19.1	58
3	13.5	41
4	4.3	13
5	2.6	8
6	1.0	3
7	.3	1
19	.3	1
Missing or N A	25.3	77

Most of the reports (94.7%, n = 288) involved male perpetrators. Two percent involved female

perpetrators. In one case (.3%), both the husband and the wife of a couples match were perpetrators.

Marital status of perpetrators was available in 68.1% (n = 207) of the reports. Of those: 57% (n = 118) were single; 22.2% (n = 46) were married; and 14% (n = 29) were divorced. The balance of the marital status categories was divided into: separated (n = 4); living together (n = 2); widowed (n = 2); and unknown (n = 2). Since 81.9% (n = 257) of all the perpetrators (N = 304) were Big Brothers, it was not surprising to find that the above percentages for marital status roughly correspond to the 1990 AID distribution for male volunteers (e.g., Big Brothers) which was: 51.2% for single volunteers; 38.3% for married volunteers; and, 6.1% for divorced volunteers.

Information for education was available for only 32.9% (n = 96) of the reports. Of those reports: 65.6% had at least some college experience which was categorized as: 28% (n = 27) some college; 3.1% (n = 3) associate's degree; 22.9% (n = 22) bachelor's degree; 7.2% (n = 7) master's degree; and 4.2% (n = 4) professional degree (e.g., Ph.D., medical doctor, lawyer). For male volunteers the 1990 AID reports that a similar disproportionate number of volunteers (79%) fell in the college educated group.

At the time of the alleged incident the perpetrators identified in the reports ranged in age from 13 (a Little Brother) to age 62. The distribution for age at both the time of incident and the time of reports were as follows:

TABLE 5 - AGE OF PERPETRATOR AT TIME OF INCIDENT OR AT TIME OF REPORT

	At time of incident (N = 304)		At time of report (N = 304)	
Age	%	n	%	n
13-19	2.6	8	1.8	6
20-29	26.0	79	29.4	90
30-39	18.1	55	27.7	85
40-49	8.2	25	14.8	45
50-59	3.3	10	6.0	18
60-69	.6	2	1.2	4
70 +	0	0	.7	2
Missing	40.8	124	17.4	53

Because the question of race did not appear on the latest allegations report form the perpetrator's race was either not indicated or not known in 77% (n = 234) of the reports. Of the perpetrators reported (N = 70): 59 (84.3%) were White; 5 (7.1%) were Black; 3 (4.2%) were Hispanic; 2 (2.8%) were Asian; and 1 (1.1%) was "other" (Indian). A similar distribution for male volunteers can be found in the AID where: 85.8% are White; 9.2% are Black; 2.3% are Hispanic; .9% are Asian; and 1.8% are other.

The occupational background and BB/BS association of the perpetrators were as follows:

TABLE 6 - PERPETRATOR'S OCCUPATION AND ASSOCIATION WITH BB/BS

Occupations (N = 203)	%	n	% male vols (N = 25,862)	BB/BS Association (N = 304)	%	n
Clerical	6.8	14	2.2	Big Brother	81.9	249
Craft	11.8	24	4.3	Big Sister	2.0	6
Labor	8.3	17	5.3	Board Member	4.9	15
Mgm.: Admin	11.8	24	14 2	Agency Staff	2.3	7
Operatives	6.8	14	2.6	Little Brother	1.3	4
Prof.Tech	29.0	59	35.9	Other	4.6	14
Sales	6.5	14	9.8	Missing or N.A	2.9	9
Service	8.8	18	5.9			
Student	5.4	11	9.5			
Other	2.9	6	2.5			
Unknown	9	2	7.9			

Over half of all the reports (52.6%, n = 160) did not contain information on a criminal records check and in addition some of the reports (14.8%, n = 45) indicated that a criminal records check was never done. It should be noted that currently two states, New York and New Jersey, in which 9% of the incidents occurred (See Table 2), do not have formal mechanisms for obtaining criminal records checks. In addition, in the past, there have been other states with similar barriers to criminal records checks, the most notable being California. Only 2.3% of the reports revealed an arrest or conviction from records checks. Perpetrators with a criminal history discovered by a records check were involved in only one exposure report, one inappropriate touching report, and one sodomy report. However, 17.1% of the reports revealed some sort of criminal history information about the perpetrator which was not obtained by a records check.

Patterns were difficult to discern with respect to the typical perpetrator's experience of working or volunteering with children, mostly because of a lack of data (49.7%). The spectrum of the youth related experiences included: other BB/BS programs (n = 22); formal youth serving organizations and church youth groups (n = 58); recreation activities (n = 27); schools (n = 27); and child care - e.g., babysitters, camp counselors (n = 12). Twenty of the reports described "other" volunteer experience (e.g., foster care, less formal activities) and 20 described "other" employment experience (e.g., juvenile counselors, employees at residential centers for youths). It should be understood that one perpetrator could fall in several or all of the categories, so the figures given above should be viewed with that aspect in mind.

Of the 86 perpetrators (28.4% of the total number of reports) for which length of residency information was available, it was found that perpetrators tended to reside for a substantial length of time in the community where the alleged incident(s) took place. In fact, 47.7% (n = 41) of the perpetrators lived in the area for over 10 years; 18.6% (n = 16) for 5 to 10 years; 10.4% (n = 9) for 3 to 5 years; 16.3% (n = 14) for 1 to 3 years; and the balance of 7% (n = 6) for less than 1 year.

In 73% of the reports, no information was given on the number of supervisory contacts during the match. For those reports that did contain that information (15.5%), the number of contacts ranged from 2 to 80. Three major issues that can have a direct effect on those number of contacts are: (1) length of the match; (2) varying definitions of "supervisory contacts"; (3) varying record-keeping systems and capabilities. Because these issues have a direct impact upon the interpretability of the data there is little to discuss.

OUTCOMES INVOLVING CRIMINAL AND CIVIL PROSECUTION

For (34.5%, n = 105) of the reports, the criminal treatment of the allegations was missing or unknown. For the others (65.5%, n = 105), the legal system resolutions were as follows: 44 (14.5%) no action; 80 (26.3%) charged or arrested (no disposition); 31 (10.2%) charged or arrested and conviction; 30 (9.9%) charged or arrested and guilty plea; 5 (1.6%) charged or arrested and dismissal (not guilty); 5 (1.6%) suicides; 4 (1.3%) applicants were rejected or terminated based on criminal history. Unsuccessful criminal prosecutions were rare among the reports. Only 1.6% of the reports indicated that criminal charges against the perpetrator were dropped or dismissed, or that he or she was found "not guilty".

Even fewer reports (14.5%, n = 35) addressed the question of civil litigation involving the allegations. In 85.5% of the cases, this information was missing. Civil resolutions were as follows: no lawsuit filed (6.3%, n = 19); suit filed against affiliate and resolution unknown (3.3%, n = 10); suit filed against both affiliate and BB/BSA and was settled (n = 2, .7%); suit filed against both and resolution unknown (n = 2, .7%); suit filed against affiliate and settled (.3%, n = 1); suit filed against BB/BS and resolution unknown (.3%, n = 1); "unknown" which included threats but no suit yet filed (3.0%, n = 9).

VICTIMS

At least one victim was a Little Brother in 71.7% (n = 218) of the reports and a Little Sister in 4.6% (n = 14) of the reports. Some of the victims were indirectly associated with the program as siblings (5.9%, n = 18) or other family members or friends (4.3%, n = 13) of a child in the program. Victims who were generally unrelated to any BB/BS program were involved in 32.2% (n = 98) of the reports (e.g., perpetrator's own children, others involved in some youth activity, neighbors, or complete strangers.)

Of the 304 reports, 31.9% (n = 97) indicated that multiple victims were involved. The total

number of victims (N = 458) included both children participating in a BB/BS program and those with no connection to the program. However, there were 17 reports where more than one victim was indicated but the total number was not specified. For those reports, the victim count was recorded as a quantity of "one". As a result, the number of victims (n = 458) is under-represented. Of the 304 reports involving all victims, 70.7% (n = 215) of the reports indicated that at least one of the victims was matched with the perpetrator.

More than half (54.1%) of the reports gave no indication of the victim's age at the time of the incident. For some of the reports where the age of the victim was reported, it was not clear when or what age was recorded. For example the age recorded could have been: (1) at the time of the incident; (2) at the time of the report; or (3) at some point during the range spanning the length of the abuse period.

Preteen and early teenage children comprised a disproportionate number of victims in the report. This was not surprising because as demonstrated below the percentage of male clients being served by BB/BS are roughly proportionate to the victim group. What follows is a table of the ages of the victims at both the time the incident occurred and at the time that the report was made. For comparison, since most of the victims were Little Brothers (71.7%, n = 218), the following table includes the distribution by percents of the male clients being served by BB/BS according to the data from the 1990 Agency Data Survey (ADS).

TABLE 7 - AGE OF VICTIM AT TIME OF INCIDENT OR TIME OF REPORT

	At Time Of Incident (N = 130)		% OF MALE CLIENTS	At Time Of Report (N = 214)	
Age	%	n	(N = 25,939)	%	n
1				.5	1
2	1.5	2		.9	2
4	1.5	2		.9	2
5			.2	.5	1
6	.8	1	.9	.9	2
7	5.8	7	3.0	3.3	7
8	6.2	8	5.9	3.3	7
9	10.0	13	9.1	6.1	13
10	18.5	24	11.6	10.3	22
11	10.0	13	13.3	10.3	22
12	16.9	22	12.7	12.1	26
13	13.8	18	13.0	11.7	25
14	4.6	6	10.4	8.9	19
15	7.7	10	7.9	10.7	23
16			5.6	3.3	7
17	1.5	2	3.6	5.6	12
18			2.1	2.8	6
19	.8	1	.7	2.8	6
20				1.4	3
21				.5	1
22				.9	2
23				.9	2
24				.5	1
26				.5	1
28	.8	1		.5	1

Many (43.8%) of the reports involved multiple incidents (i.e. the number of times any one child was victimized) for at least one of the victims listed. There was no clear relationship between the number of incidents and the victim's age.

Most of the reports (85.6%) were missing data on the principle victim's grade level at the time of the incident(s). Those reports in which grade-level information was available are fairly evenly distributed among the grades with a slightly higher percentage identifying third graders as victim.

Of the 304 reports, 42.4% failed to comment on the victim's primary caretaker, and in .7% of the reports the primary caretaker was unknown. Of the reports that mentioned primary caretaker (N = 170), the principle victim's primary caretaker was a single parent 90% of the time, of which 89.4% (n = 152) were females and .6% (n = 1) was a male. This preponderance of single parent households is similar to the distribution for male clients found in the AID (88.1%). It is not recorded in the AID whether the single parent is male or female but typically it is the mother.

CONCLUSIONS

If files are to be maintained on the known sexual abuse allegations it is important to reflect on the issues covered in this report. While the right general questions were asked, sometimes they were not as specific as they should have been. In many instances, this lack of specificity arose because either the questions on the forms or their responses were vague. One notable omission was that the forms didn't ask whether the abuse occurred more than once, and if so, how often and over what period of time.

It is suggested that the current forms, used for reporting, be redesigned into a single document which would be used uniformly across the country. The success of such an effort depends not only on the creation of a new form that asks all the "right" questions, but in the diligent completion of that form and a nationwide campaign to use the form consistently for all appropriate allegations.

In summary, much of the missing data could be obtained with the use of explicit and uniform forms; diligent record-keeping and follow up; as well as implementing rigorous reporting policies and procedures.

AMERICAN BAR ASSOCIATION

Center on Children and the Law
1800 M Street NW
Washington DC 20036
(202) 331-2250
ABA Fax (202) 331-2220

A PROGRAM OF THE YOUNG LAWYERS DIVISION

Advisory Board
Chairperson
Kimberly K. Thomas
ABA Young Lawyers Division

Donald C. Brown
National Association of Counsel for Children
Benjamin Cohen
ABA Litigation Section
Hon. Susan M. Edwards
National Council of Juvenile and Family Court Judges
Maria Fiascone
ABA Commission on Homelessness and Poverty
Professor Sanford N. Katz
ABA Individual Rights and Responsibilities Section
Dr. Frederick E. Green
American Academy of Pediatrics
Hon. Jeremiah S. Jeyaraj Jr.
ABA Judicial Administration Division
Judith E. Jones
National Center on Children in Poverty
Professor Sanford N. Katz
International Society of Family Law
Bruce Kaufman
ABA Family Law Section
Jim Lange
National Child Advocate
Helen Leonhart Jones
National Court Appointed Special Advocate Association
Jean Tucker Mann
Child Welfare League of America
Mike Moore
National Association of Attorneys General
John E.B. Myers
McGeorge School of Law
William L. O'Malley
National District Attorneys Association
Kenneth L. Ragged
ABA Family Law Section
Alan Sallis
ABA Family Law Section
Robert G. Schwartz
Juvenile Law Center
Hon. Andrea Shubow
ABA Criminal Justice Section
Jaime Thomas
Practising Law Institute

Young Lawyers Division
Chairperson
Mark G. Sessions
Chairperson-Elect
Daniel J. Gaertner
Board of Governors Liaisons
Jane Sloan
Diane Bass

Center Professional Staff
Howard A. Davidson, Director
Robert M. Hornyak, Associate Director
Josephine de Leon
Sue Dicus
Kimberly Dodd
Sharon Lateseas Evans
Lisa Nachmann Fabos
Linda Gardner
Linda Hammond
Mark Hardin
Margaret Campos Hughes
Patricia M. Hunt
Sally Small Imig
Sarah Kalman
Eleanor Lackman
Ralph Lamar
Rita Lewis
Anne Mahle Lou
Debra Lieberman
Louise Sinclair
Barbara E. Smith
Marianne Takas
Susan Weiss

Center Administrative Staff
Carmen Hooker
Cindy Lampe
Anne Lucas Spaeth
Yvette Williams

August 13, 1993

The Honorable Don Edwards
Chairman, Subcommittee on
Civil and Constitutional Rights
House Committee on the Judiciary
Rayburn House Office Building, Rm. 806
Washington, D.C. 20515-6220

Dear Congressman Edwards:

On July 16, 1993, the Subcommittee on Civil and Constitutional Rights held a hearing on H.R. 1237, the "National Child Protection Act." We are providing information requested for inclusion in the written record of this hearing. At the outset, we want to applaud the Subcommittee's efforts toward developing a stronger national system for identifying persons with criminal backgrounds who work with or seek to work with children. The proposed Act, which is the subject of these hearings, presents a framework worthy of consideration.

The American Bar Association Center on Children and the Law is currently conducting a study which we believe would greatly assist in the planning and implementation of a national background screening system for child care and youth service workers. The development of effective legislation, always a difficult task, is compounded in the present situation by the dearth of empirically-based literature assessing criminal record screening of child care and youth service workers. Our current two-year study, funded by the Department of Justice through its Office of Juvenile Justice and Delinquency Prevention, will assist in filling this void. The study will provide a comprehensive overview and evaluation of screening practices, including criminal record checks, that are used to identify potentially abusive employees and volunteers and will make recommendations regarding a national approach to screening. The final report and recommendations will be completed by June 1994, although some of the results may be available earlier. (Enclosed is a project summary as well as a legal and social literature review discussing screening methods, including criminal record checks.)

Our preliminary findings indicate that there are significant factors that will impact on the establishment of a national background check system. In particular, the Committee may wish to consider the extensive time it takes to receive requested information, typically as long as 6 to 8 weeks, often

causing organizations to hire individuals before a background check is completed. Further, it appears that the criminal record information requested may be incomplete; disposition data is often lacking or cannot always be linked to an original arrest record. Moreover, there are significant costs associated with automating and updating criminal history information systems, as well as in requesting a federal, state, or local background check (for example, the FBI charges $23.00 per fingerprint check, while state fees may run as high as $27.00). Ascertaining the extent of these costs and which individual, organization or government agency will pay for them is, therefore, implicated in any decision to establish a national background check system.

In addition, the Department of Defense and other federal agencies, pursuant to Subtitle E of the Crime Control Act of 1990, have attempted to implement provisions similar to those currently proposed in the National Child Protection Act. Their experience, which will be reviewed and evaluated in the OJJDP-funded study, would prove invaluable in determining whether to enact the proposed Act or whether changes are advisable. Specifically, the study will: (1) indicate the length of time required to implement the criminal background check systems required of various federal agencies under Subtitle E; (2) detail the costs and analyze the effectiveness of those systems; and (3) delineate any problem areas that may have slowed the implementation or made it more costly.

Given the limited funds available in this time of fiscal constraint, and to ensure that Congress and the states are prepared to adequately fund any legislation enacted, we offer the Subcommittee this information as it considers the proposed Act. In the event that related legislation requiring criminal background checks is considered in the future, the Subcommittee may wish to review the study's findings regarding the effectiveness and costs of various background screening methods.

We thank you for this opportunity to provide you with information regarding the study and hope that our comments have proved useful. If we can be of further assistance, please contact Noy Davis, Esq., Project Manager, at (202) 331-2244.

Sincerely,

Susan Wells, Ph.D.
Project Director

Noy S. Davis, Esq.
Project Manager

Kimberly Dennis, M.P.A.
Research Associate

EFFECTIVE SCREENING OF CHILD CARE AND YOUTH-SERVING WORKERS

Project Summary

Statement of the Problem

There are many volunteers and paid personnel, working in child/youth-serving organizations, who have direct contact with children and youth. Most are dedicated and caring individuals. Too often, though, employees or volunteers of such organizations have used their position to victimize young persons.

Various state and federal laws and regulations on procedures for screening employees and volunteers of child/youth-serving organizations have been adopted over the last several years. However, no comprehensive information is available as to what screening practices are now mandated and utilized, and how effective particular screening practices have been in identifying potential employees and volunteers who might harm the children and youth they would be serving.

Goals of the Project

(1) To provide a comprehensive overview of screening practices, including criminal record checks, that are used in public and private sector child/youth-serving organizations to identify potentially abusive employees and volunteers; and

(2) To evaluate the effectiveness of current screening practices in protecting children and make recommendations regarding a national approach to screening.

Project Specifics

This two-year project has been undertaken by the Center on Children and the Law of the American Bar Association pursuant to a grant from the federal Office of Juvenile Justice and Delinquency Prevention. The Center on Children and the Law is a project of the ABA Young Lawyers Division.

The project staff includes:

Susan J. Wells, Ph.D., Project Director;
Noy S. Davis, J.D., Project Manager/Attorney;
Kimberly Dennis, M.P.A., Project Research Associate;
Cheryl Hinton, Project Secretary.

In order to utilize certain organizations' considerable expertise regarding issues and methods involved in this project, the project has established subcontracts with:

Westat, Inc.;
National Collaboration for Youth;
American Public Welfare Association;
National School Boards Association; and
Center for Child Protection and Family Support.

Project Methodology

Specific project tasks include but are not limited to:

(1) Developing a directory of child/youth-serving organizations and agencies, complete with a listing of professions, jobs and volunteer positions, the estimated number of individuals in those given professions and positions, and the estimated number of children served. The directory will serve to identify the potential universe of those who work with or around children and analyze the degree of risk and accessibility to children in different settings.

(2) Reviewing state statutes, regulations, legislation and policies regarding the licensing and oversight of child/youth-serving organizations and their professionals and volunteers. This review and analysis will determine the numerous state requirements and to what degree these mandates vary both between and within the states for a given setting.

(3) Conducting a nationwide survey of child/youth-serving organizations regarding types, costs, and effectiveness of their screening methods. Among other things, this survey will help capture how often and in what types of organizations screening takes place and in what types of organizations abuse is most likely to occur.

(4) Conducting an in-depth supplemental study on the effectiveness of screening practices in conjunction with the Department of Defense. This piece will provide concrete information on the implementation, results and evaluation of background screening methods, (in particular, criminal record checks). The Department of Defense makes an excellent host for such a study due to the law (P.L. 101-647) mandating screening of all employees in federally-operated or federally-contracted child caring facilities and the variety of settings (e.g., child development centers, schools, medical facilities, and voluntary, recreational groups) in which DoD serves children.

Additional project tasks include:

(1) Reviewing relevant legal and social science literature;

(2) Conducting a survey of the insurance industry regarding insurers' requirements and recommendations for screening procedures by child/youth-serving organizations; and

(3) Preparing a final report, which will include recommendations regarding a national approach to screening of child/youth-serving organization employees and volunteers.

For further information contact: Noy S. Davis (202) 331-2244 or Kimberly Dennis (202) 331-2669, ABA Center on Children and the Law, 1800 M Street, N.W., Suite 200S, Washington, D.C. 20036. A copy of *The Effective Screening of Child Care and Youth Service Workers: A Review of the Literature* is available from the Center for $12.00. The Final Report and Recommendations of the Project will be available in June 1994.

EFFECTIVE SCREENING OF CHILD CARE AND YOUTH-SERVICE WORKERS: A Review of the Literature

May 1993

Kimberly Dennis, M.P.A
Noy S. Davis, Esq.

ABA Center on Children and the Law
A Project of the Young Lawyers Division,
American Bar Association

Prepared under Grant No. 92-MC-CX-0013 from the Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice.

Points of view or opinions in this document are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice.

The views or opinions expressed herein have not been approved by the House of Delegates or Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policies of the American Bar Association.

This report was developed as part of the research project on Effective Screening of Child Care and Youth-Service Workers by the grantee, the American Bar Association Center on Children and the Law.

The project staff includes:

Susan J. Wells, Ph.D., Project Director;
Noy S. Davis, J.D., Project Manager/Attorney;
Kimberly Dennis, M.P.A., Project Research Associate;
Cheryl Hinton, Project Secretary.

For more information about this report contact:

Kimberly Dennis
ABA Center on Children and the Law
1800 M Street, NW
Suite 200 South
Washington, DC 20036

© 1993, American Bar Association

TABLE OF CONTENTS

INTRODUCTION		1
I.	PROBLEM STATEMENT	3
A.	Growing Number of Children in Out-of-Home Care	4
B.	Speculation on the Number of Adults Who Come Into Contact with Children	5
C.	Incidence of Extrafamilial Abuse	6
D.	Identifying "Child Abuse": The Need for a Uniform Definition	6
E.	Failure to Take Strong Action Against Abuse in Out-of-Home Settings	7
II.	PREVENTING EXTRAFAMILIAL ABUSE -- NO EASY ANSWERS	9
A.	Difficulty in Profiling Child Abusers	9
B.	The Recidivistic Nature of Child Abuse	11
C.	Limitations of Attempting to Profile Offenders	13
III.	NATIONAL INITIATIVES	15
A.	Early Efforts	15
B.	More Recent Federal Initiatives	17
IV.	STATE SCREENING LAWS: A MYRIAD OF APPROACHES	18
A.	Licensing	19
B.	Access to Criminal History Information	20
V.	USE OF CRIMINAL RECORD CHECKS FOR PRE-EMPLOYMENT AND LICENSING PURPOSES	22
A.	Background on Criminal History Information Systems	23
B.	Child Offender Arrests and Convictions are Lacking	24
C.	Likelihood of Discovering an Individual with a Criminal Record	25
D.	The Growing Use of Criminal Records for Employment and Licensing Purposes	27
E.	Criminal History Information and Data Quality Issues: Cause for Concern	29
F.	Disadvantages and Criticisms of Criminal Record Checks	34
G.	Legal Issues Arising From the Use of Criminal Record Checks	42
H.	Unanswered Questions, Unresolved Issues	47

VI. OTHER SCREENING MECHANISMS 50

A. Screening Against State Central Child Abuse Registries 50
B. Screening Against State Sex Offender Registries 55
C. National Practitioner Data Bank 58
D. Teacher Identification Clearinghouse 59
E. Application Forms and Personal Interviews 60
F. Reference Checks 63
G. Psychological Tests 65
H. Additional Pre-Employment Screening Options 68
I. Post-hiring/Placement Procedures to be Used in Conjunction with Background Screening 69
J. Summary Statement Regarding Screening Methods 70

VII. CONCLUSIONS AND RECOMMENDATIONS 70

A. Summary - What We Know to Date 70
B. Preliminary Recommendations for Effective Screening 72
C. Looking Ahead to More Effective Screening and Other Prevention Efforts 75

ENDNOTES 77

REFERENCES AND SELECTED BIBLIOGRAPHY 81

INTRODUCTION

Although it is relatively easy to check on a potential employee or volunteer's basic professional capability, securing reliable information about an applicant's moral adequacy is not always so simple. The ever-increasing need for credible background information is stymied by a limited ability to obtain it. Organizations that engage child care and youth-service workers are struggling with this very dilemma -- a dilemma that has intensified under the media's spotlight on sensational child abuse cases and parents' growing anxiety about their children's safety in out-of-home care.

In response, legislators, child advocates, child- and youth-serving organizations and other concerned individuals are eagerly seeking out methods guaranteed to prevent child abuse in out-of-home settings. The search thus far has unearthed some complex and unresolved issues about extrafamilial child abuse, while fueling the debate over what is the most effective way to identify employees and volunteers who may potentially harm the children they serve. Much of the focus has centered on the growing use of criminal history record checks. The current situation has thus prompted several questions, including:

- To what extent is child abuse perpetrated by child care and youth-service workers in out-of-home settings?

- What are the different screening mechanisms available to help identify potentially abusive employees and volunteers during the selection and/or hiring process?

- How effective are each of these screening mechanisms in preventing extrafamilial abuse?

- Should child- and youth-serving organizations be mandated by law to conduct criminal record checks on all employees and volunteers who may come into contact with children and youth, even if such contact is on an infrequent basis?

- Is the quality of information gained from screening methods worth the substantial human resource and financial expenditures, or are there more cost-effective measures we can take to prevent child abuse?

What follows is a discussion of this quandary, based on a review of literature (1980 to 1992) pertaining to the screening of employees and/or volunteers who may be unsuitable to work with or around children. The emphasis of this report is on the use of criminal record checks to ferret out unacceptable applicants. Readers should note that our research uncovered few empirically based studies, reports or articles which document the effectiveness of screening practices -- particularly criminal record checks -- both in terms of identifying potential child abuse offenders and making the best use of scarce

funds. Taken together, the literature exposed a mix of opinions and experiences regarding screening of child care and youth-service workers. Unfortunately, most of these views were not sufficiently backed by the solid, factual data needed to formulate sound decisions and prudent recommendations.

This review thus begins with a general assessment of the problem and nature of extrafamilial child abuse (Sections I and II) and then hones in on matters specific to screening techniques, in particular criminal record checks. Topics addressed in Sections III through V include national legislative initiatives regarding background screening; the myriad of state laws, regulations and statutes pertaining to screening; and implications of the growing use of criminal history record checks for pre-employment and licensing purposes. The latter topic area includes a discussion of criminal history information and data quality concerns, disadvantages of criminal record checks and legal issues pertaining to the use of criminal record checks. A cursory look at other screening options (e.g., state child abuse registry checks, interviews, psychological tests) is then provided in Section VI, followed by a final section summarizing some tentative resolutions regarding effective screening procedures.

Readers should keep in mind that these initial conclusions are general in nature due to the lack of comprehensive information currently available. This literature review serves as a first-step in the present ABA Center on Children and the Law study of effective screening practices used by child- and youth-serving organizations. The review is intended to bring attention to many unresolved issues and set the framework for the study's final objective: developing recommendations for a national approach to the screening of child care and youth-service workers. This project, to be completed in June 1994, is made possible with the support of the Office of Juvenile Justice and Delinquency Prevention.

I. PROBLEM STATEMENT

About 10 million young children spend a significant part of each weekday being cared for by someone other than their parents (Children's Defense Fund, 1992). Our nation's changing demographics and the growing number of single-parent and two-parent working households has resulted in an increased reliance on out-of-home care and supervision -- a trend not likely to change anytime soon. And whether or not a child's mother works, increasing numbers of 3- and 4-year-olds are spending some portion of their day or week in a group program (Hayes et al., 1990). In addition to child care, there are many other service providers who help meet the diverse needs of children (e.g., education, medical care, mental health counseling, legal assistance, recreation). While the majority of employees and volunteers who work in the various child and youth settings are dedicated and caring individuals, too often, an individual has used his or her position of trust to victimize young people.

At home or in the confines of school, day care or some comparable setting, child abuse is widespread. Reported incidents of all child abuse shot up 31 percent between 1985 and 1990 (Senate Judiciary Committee, November 1991). And while close to 2.7 million cases of child abuse were reported in 1991, an additional 6 million cases go unreported each year (Children's Defense Fund, 1992; U.S. General Accounting Office, 1992). Although it is recognized that the majority of these incidents happen in the home, pinpointing the extent of child physical and sexual abuse which occurs in **out-of-home** settings is difficult and widely disputed. Most available figures depict child *sexual* abuse only, primarily in the day care setting. Finkelhor and Williams (1988) estimate that about 5.5 children per 10,000 enrolled in day care are at risk of sexual abuse, a statistic frequently cited. Other studies estimate that reported rates of abuse in day care centers, foster care homes and schools range from 1 to 7 percent (Baas, 1990; Daro, 1992; Margolin, 1991b; Rutledge, 1992).

Despite the picture that most studies paint, extrafamilial abuse is not limited to day care centers and schools: Over the past 10 years, as many as 800 cases of child sexual abuse by priests have either been filed as lawsuits or settled quietly out of court by Roman Catholic dioceses. And according to one author who studied priests' sexuality and celibacy, "for each case that's public and legal, there's one that's silent and settled" (*The Washington Post*, December 4, 1992). *The Washington Times* reported that the Boy Scouts of America becomes aware of about 100 cases of child sexual abuse a year and maintains more than 2,000 cases on file at any one time (May 20-24, 1991, special series). Similar statistics do not exist regarding *physical* abuse.

A. Growing Number of Children in Out-of-Home Care

Adequately documenting and responding to extrafamilial abuse becomes more problematic as one begins to tally the multitude of settings in which offenders seek access to our nation's 68.5 million children: educational institutions, day care facilities, foster care homes, youth development organizations, social service agencies, medical care facilities, juvenile detention, correctional and other law enforcement facilities, recreational centers, and religious-based programs. Once we consider the swelling client bases for each respective service provider -- due in part to the dissipation of the "traditional" family, the proliferation of economic pressures and social ills, and the desire to supplement a child's development with outside activities -- the potential magnitude of the problem becomes startling. Consider, for example, the volume of children served by just a smattering of various child- and youth-serving workers:

- An estimated **429,000** children resided in foster family homes, group homes or institutional settings in 1991, an increase of 59 percent from the early 1980s; it's estimated that close to **900,000** children will live in out-of-home care by 1995 (Children's Defense Fund, 1992).

- Public school enrollment rose from **27 million** in fall 1985 to **30.4 million** in fall 1991, an increase of close to 13 percent; enrollment is expected to reach close to **32 million** by 1995 (National Center for Education Statistics, 1992).

- Approximately **750,000** children and youth received care from mental health organizations in 1988 (National Institute of Mental Health, July 1991).

- The 15 organizations alone that comprise the National Collaboration for Youth serve approximately **30 million** young people each year (Carnegie Council on Adolescent Development, 1992).

- An estimated **35 million** children and youth aged 6 to 18 participate in youth sports programs each year (Martens, 1986).

Arriving at a clear-cut number of how many children and youth are served in all possible settings is elusive. The bottom line is, "We really don't know beans about these children. We don't have accurate counts . . . " or the solid data needed to make appropriate policy decisions and to justify spending scarce resources (Select Committee on Children, Youth, and Families, September 1986). Efforts are hampered by the large number of unlicensed, unregulated day care centers and family day care homes, and the fact that many voluntary and nonprofit organizations do not keep figures on how many children they serve.

B. Speculation on the Number of Adults Who Come Into Contact With Children[1]

Given our limited ability to ascertain how many children make their way in and out of child- and youth-serving organizations, we might instead focus on how many adults serve children and youth in some capacity. Unfortunately, definitive estimates on the number of employees and volunteers in professions that come into contact with children is even more cryptic, in particular among voluntary and religious-based organizations. While there are more than 17,000 community-based, youth development organizations and some 400 private, nonprofit national youth organizations, organizational staffing levels vary, as does the use of volunteers (Carnegie Council on Adolescent Development, 1992). The high staff turnover rate, estimated to be 40 to 50 percent annually among some child care workers, compounds the problem (Hayes et al., 1990; Willer et al., 1991).

To provide some idea of the total universe of child care and youth-service workers, Table 1 highlights two of the more prevalent groups of adults who work with children: child care workers (in center and family day care[2]) and school staff.

TABLE 1:

ADULTS WHO COME INTO CONTACT WITH CHILDREN - IN CHILD CARE & THE SCHOOLS	NUMBER (approximate)
CHILD CARE[3]:	
Center-based early education program staff	840,000
Regulated family day care providers	165,200
Unregulated family day care providers	694,400 - 2,660,000
Total Child Care Workers	1,699,600 - 3,665,200
ELEMENTARY & SECONDARY SCHOOLS[4]:	
Public & private schools - admin. and instruct'l staff	3,600,000
Public & private schools - noninstruct'l/support staff	1,425,000
Public and private schools - volunteers	1,361,400
Independent schools - all staff	109,500 - 111,000
Total Elementary and Secondary School Staff	6,495,900 - 6,497,400
TOTAL CHILD CARE WORKERS AND SCHOOL STAFF	**8,195,500 - 10,162,600**

C. Incidence of Extrafamilial Abuse

Based on the information outlined above, we have determined that millions of adult employees and volunteers come into contact with children and youth (about 8 to 10 million in child care and education alone). The next piece of the puzzle is how much of all child abuse is perpetrated by those individuals working in child and youth settings. Again, there is no simple answer.

Estimates of child *sexual* abuse involving non-familial perpetrators range from as low as 7 or 8 percent to as high as 62 percent of all sexual abuse cases; for *all* types of extrafamilial child abuse, the range is 11 to 30 percent (Dube and Hebert, 1988; Gomes-Schwartz et al., 1990; Margolin and Craft, 1989; National Center on Child Abuse and Neglect, 1990; Simon et al., 1992; U.S. Department of Health and Human Services, 1985). But accurate prediction is next to impossible and many authors claim significant underreporting. Rindfleisch and Rabb (1984b) assert that only one in five complainable cases in residential facilities may have been reported to child protection agencies and the complaint rate may be twice as high as intrafamilial rates. Fuller (1989) noted that perhaps less than 6 percent of all child molestations are ever reported. And the New York State Subcommittee on Child Abuse (1983) found that "based on current statutory definitions. . . more than 80 percent of all alleged incidents of child abuse and neglect [in the foster care setting] are never reported," 65 percent of which are abuse.

"[W]e do a lot better job of tracking our imports and exports, and the hours that we work, and all sorts of economic data than we do in tracking how many children are really physically and sexually abused in the United States, and how many children die in the United States" (Select Committee on Children, Youth and Families, March 1987b). Part of the problem is that abuse may be "quite blatant and well entrenched, or it can be quite subtle -- so subtle, in fact, that supervisory and administrative people in charge may not know it's going on" (California Association of Services for Children, 1987). Even if questionable staff behavior is uncovered, an agency may struggle over whether such incidents actually typify child abuse. How then does an organization (or an individual who suspects extrafamilial abuse) arrive at an answer? Are specific criteria used to assess the situation? Are these criteria applied consistently and across-the-board to all staff? Many child- and youth-serving organizations are grappling with these and other related questions.

D. Identifying "Child Abuse": The Need for a Uniform Definition

Strife over exactly what constitutes child abuse merely accentuates the confusion over how many children are abused in out-of-home settings. No standard, uniform definition exists regarding *extrafamilial* abuse. Classifying

acts of sexual abuse may be more straightforward than categorizing physical abuse, the latter of which is thought to be more prevalent but harder to define, in part because it is sometimes difficult to distinguish from appropriate disciplinary actions and may differ according to context. Defining abuse is thus often based on subjective value judgments. This absence of operational definitions and guidelines for substantiating all types of institutional abuse impedes reporting and intervention in out-of-home care settings.

Limited definitions for "child abuse" originated from the intrafamilial setting. The Child Abuse Prevention and Treatment Act (P.L. 93-247), [later amended in the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978 (P.L. 95-266)], defines child abuse and neglect as "the physical or mental injury, sexual abuse or exploitation, negligent treatment or maltreatment of a child under the age of 18, or the age specified by the child protection law of the State in question, by a person who is responsible for the child's welfare . . . as determined in accordance with regulations prescribed by the Secretary [of HEW]." But Daro (1988) asserts that there is wide discrepancy in the extent to which individual states have adopted the federal definition of child abuse: "[T]here is no single child maltreatment law for the United States as a whole; instead there are 50 different laws, each of which has its own definition of maltreatment, standards for reporting known cases of maltreatment, and its own sanctions against those found guilty of such offenses." In addition, child abuse laws fall into two distinct categories -- civil child protection laws designed according to the needs of the child and criminal child abuse laws aimed at punishing offenders -- and their respective definitions may differ.

While discord over how to define acts of child abuse perpetrated by employees and volunteers increases reliance on individual judgments and frustrates reporting and prevention efforts, other fundamental and well-entrenched factors also help perpetuate the problem. One of these is the intense disbelief that abuse could ever take place within an organization's own ranks; a knee-jerk response triggered by an "it can never happen to me" mentality. Two other sustaining factors are what Lanning refers to as (1) "public naivety," or a misconception about the offender, and (2) "bureaucratic irresponsibility," or an apprehension about confronting the problem (*The News Chief*, September 28, 1984).

E. Failure to Take Strong Action Against Abuse in Out-of-Home Settings

Historically, there has been an unwillingness to acknowledge and confront child abuse which occurs outside the home. While public awareness has increased, many child- and youth-serving organizations still vehemently and publicly deny that abuse by staff is a problem. "[T]he nonviolent sexual

abuse of children is more often dealt with as a nuisance offense. The bottom line is that society condemns child molestation in the abstract, but how it responds to individual cases depends on the particular circumstances and the molester's position in the community" (Lanning, 1987). Identification, investigation and prosecution of child molesters may not be welcomed by many communities, especially when the offender is considered a pillar of society (e.g., the individual committed to multiple worthy causes) or believed to be of superior status to the commoner (e.g., a priest).

Once disbelief wanes, the desire to protect an organization or individual worker's own position may surface, thereby minimizing the original problem out of existence. As one education attorney explained, "Unfortunately. . .the professional reputation of superintendents are at stake. They're not going to allow their reputations to be besmirched by rampant reports of violence, vandalism and sexual abuse in their own schools. That perhaps is a more realistic problem than anything else -- the outright reluctance to acknowledge a problem" (*The News Chief*, September 24, 1984). However, this defense mechanism is slowly being worn away by an energized victims' movement and a growing number of successful lawsuits, as well as other factors.

Those organizations that have acknowledged the reality of abuse often find themselves in a catch-22 situation: Although they are legally required to report cases, most strive for minimal publicity and visibility surrounding such events. The result has been organizational responses that are, at best, informal in nature. The Archdiocese of Chicago (June 1992b) has admitted that before 1983, very few cases of child sexual abuse were reported to the church. Cases that were reported were handled internally and "lumped together with other clinical problems, cases of financial misconduct, and other celibacy-related problems." An added complication that may prevent organizations from taking a strong stand on curbing abuse is the lack of financial and human resources to deal with the problem. Rindfleisch and Rabb (1984b) found that almost half of the states perceived institutional abuse to be a low-priority issue, in large part because they lacked the necessary resources to respond.

Even parents may choose to overlook or ignore abusive behavior by extrafamilial caregivers. Margolin (1991b) studied various contexts in which sexually abusive providers come into contact with children and found that in 11 percent of the cases, either the child told the parent(s) that the caregiver was touching them or the parent(s) knew that the caregiver had a record of child molestation or other criminal activity, yet did nothing to change the situation.

The literature tells us that millions of children spend a substantial amount of time in some type of out-of-home setting (be it a child care center, school, recreational center, medical care facility or some other institution); at

the same time, millions of adults occupy positions of trust that put them into contact with these children and youth. Given the volume of children and adults who pass through the doors of various child- and youth-serving organizations and the fact that out-of-home child abuse does occur and may be even more prevalent than reported, a closer look at extrafamilial child abuse prevention is warranted. In doing so, clearer definitions of extrafamilial child abuse, especially physical abuse, and the willingness of child and youth organizations to concede that abuse may occur within their own ranks are needed.

II. PREVENTING EXTRAFAMILIAL ABUSE - NO EASY ANSWERS

While consensus on the prevalence of out-of-home abuse may be lacking, there is no denying that the problem exists and demands attention. Although precise answers on how to best respond are elusive, efforts that concentrate on prevention are most desirable. Deciphering the prevention puzzle is not without complications and requires the following initial actions:

- Determining all the steps that can be taken to prevent both initial and repeated abuse by child care and youth-service workers;
- Discerning which responses are most effective in identifying potentially abusive employees and volunteers;
- Weighing the advantages and disadvantages of each strategy; and
- Assessing the feasibility of each approach, in light of administrative, fiscal, technological and political constraints.

Obviously the most appealing strategy for any child- and youth-serving agency would be to have in hand a clear exhaustive checklist of traits proven to characterize any and all child abusers. Screening potential employees and applicants against such a list would be quick, simple, inexpensive and guaranteed. But the reality is that a guaranteed method does not exist and is not likely to be developed anytime soon. Until the fervent search yields a successful formula for identifying potentially abusive employees/volunteers, child- and youth-serving organizations must be resourceful in their hiring and screening efforts and consider all available options.

A. Difficulty in Profiling Child Abusers

Growing knowledge and awareness of extrafamilial child abuse, coupled with extensive media coverage of several exceptional cases, has resulted in a flurry of public policy and legislative efforts to protect children from such offenders. Of the many responses (e.g., education, strengthening of

reporting laws, tougher criminal penalties), the area least studied and understood is how to identify adults who may potentially abuse children. Despite the dearth of tangible information in this area, opinions are abundant. All opinions, however, lead to the same conclusion: There is no discernible profile of a child abuser and no system will predict with absolute certainty whether an employee or volunteer is going to sexually or physically abuse a child.

Margolin and Craft (1989) concluded that "despite literally hundreds of studies devoted to delineating the psychological make-up of child sexual abusers, there continue to be few reliable ways by which these characteristics can be diagnosed. . . ." As one former Scoutmaster convicted of molesting boys in his troop summed up: "There's no way for sure you can know if you have somebody in your organization who's gonna do what I did" (*Washington Times*, May 20-24, 1991, special series).

One of the most significant problems is that child abusers may reside anywhere within an organization: in direct service, management or agency support roles. Offenders run the employee/volunteer gamut and include day care center directors, school administrators, experienced and trusted teachers and aides, coaches, doctors and dentists, priests and other religious personnel, janitors, bus drivers, security personnel and even relatives of child care providers. Finkelhor and Williams (1988) found that 58 percent of reported sexual abuse cases in day care were committed by a person who was **not** a part of the professional day care staff; perpetrators included janitors, bus drivers and some outsiders with no role in the facility at all. A quarter of the cases involved non-employee husbands and sons of the day care directors and teachers. A review of child sexual abuse cases within Big Brothers/Big Sisters of America revealed that 10 percent involved professional staff, including executive directors and board members (Wolff, 1986). And of the 43,000 active priests in the United States, it's estimated that 6 percent have pedophiliac tendencies (*Washington Post*, November 15, 1992).

While extrafamilial abuse can be perpetrated by males or females, men are more often identified as the perpetrator. Finkelhor and Williams (1988) found that even though women made up 40 percent of the abusers in their day care sample, men were still responsible for the majority of abuse while accounting for only an estimated 5 percent of the staff. Other studies have found that males commit between 42 and 95 percent of the abuse (Fuller, 1989; Margolin, 1991a; Margolin and Craft, 1989).

Adolescents as an offender subgroup are receiving increased attention, in large part because of the prevalence and often more violent nature of their abuse. Many authors also argue that adolescence is the common age of onset for child sexual abuse.[5] Studies have shown that adolescents perpetrate

between 25 and 47 percent of physical abuse and from 14 to 83 percent of sexual abuse (Dube and Hebert, 1988; Finkelhor and Williams, 1988; Gomes-Schwartz et al., 1990; Margolin, 1991a, Margolin and Craft, 1990). And according to the *Statistical Abstract of the U.S.: 1992,* of the over 1.75 million arrests of children under 18 in 1990, 15 percent were for violent offenses, over half (8 percent) of which were for sex offenses or offenses against family/children.

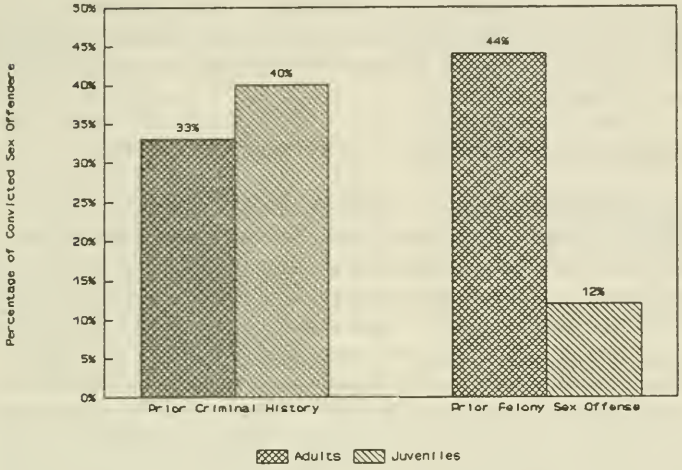
Groth and his colleagues (1982) explain that "all too frequently, sexual offenses by juveniles are dismissed as merely adolescent sexual curiosity or experimentation. Since such offenses go unrecognized by the criminal justice and mental health systems, they are not addressed. No intervention occurs until the offender is an adult; by then, many sexual assaults and victimizations may have occurred which might otherwise have been prevented." As depicted in Figure A on the next page, 40 percent of the 165 juvenile sex felons committed to Washington State's Division of Juvenile Rehabilitation in 1991 had a prior criminal history, 12 percent of which were for felony sex offenses (Washington State Institute for Public Policy, 1992). The recognition that abusive behavior may begin early in an offender's life and persist for the majority of his/her years is particularly distressing.

B. The Recidivistic Nature of Child Abuse

Whether the offender is male or female, young or old, child abuse is rarely a one-time event and often involves multiple victims. "Given that many sex offenders have established a repetitive pattern of deviant behavior prior to an arrest. . . we can expect many sex offenders to repeatedly commit sex offenses" (Furby et al., 1989). In a 1986 National Institute of Mental Health study of over 400 child molesters, offenders admitted to committing over 67,000 instances of child sexual abuse, an average of 117 victims per abuser; those targeting young boys averaged 281 (Senate Judiciary Committee, November 1991). Other studies place the average number of victims at anywhere from 7 to 100 (Conte et al.., 1989; Gilgun and Connor, 1989; Rogers and James, 1991).

Even those offenders who are discovered and convicted often return to their old ways. A recidivism study by Rice and colleagues (1991) found that close to one-third of extrafamilial sexual offenders were convicted of a new sex offense; 43 percent committed a violent or sexual offense. In a compilation of sex offender recidivism reports, the Washington State Institute for Public Policy (1992) revealed that 10 to 29 percent of child molesters who abused girls and 13 to 40 percent of child molesters who abused boys repeated the offense. The Institute also found that of those adults convicted of felony sex crimes in Washington (fiscal year 1992), one-third had a prior criminal history; 44 percent of which were for felony sex offenses (See Figure A).

Figure A: Percentage of Convicted Adult and Juvenile Sex Offenders in Washington State Having a Prior Criminal History; Percentage of Each with Prior Felony Sex Offense



Source: Washington State Institute for Public Policy, 1992

In a separate California study, the results of a 15-year follow-up of 1,362 sex offenders first arrested in 1973 showed that almost half were rearrested for some offense, 20 percent for a subsequent sex offense (Lewis, 1988). Reported recidivism rates, according to Furby and her colleagues (1989), have ranged from 0 to 50 percent, a range "exceeded only by the array of statutes and policies applied to sex offenders."

Two cases illustrate the seriousness of the multiple victim problem: In Washington State, a man was arrested in April 1991 for molesting nearly 200 children in Washington, Oregon, Montana, Idaho and California. His first conviction dated back to 1969. In another case, a school psychologist was convicted in 1985 of child molestation in Maryland and after serving time there later moved to Virginia where he was again hired as a school psychologist. Six months later he was arrested for molesting 15 elementary school students (*Congressional Record*, June 27, 1991). Advocates of criminal record checks are quick to cite cases such as these to support the need for such background checks.

80-609 O - 94 - 5

The overall message is clear: child abusers cover a wide spectrum and the "severity, number and type of victims, and permanence of the features vary from one child molester to the next and also vary with the passage of time in the same abuser" (Fuller, 1989). When screening for a history of or potential for child abuse, organizations need to understand that offender characteristics differ not only between physical and sexual child abusers, but also within subgroups of sexual child abusers (e.g., situational and preferential). Given the complexity and diversity of the offender population, can any one type of screening be effective in identifying a potential offender? The answer, to date, is unclear.

C. Limitations of Attempting to Profile Offenders

Due to the complex nature of child abuse and the general unpredictability of human nature, any attempts to assess the potential for abusive behavior should be broached with extreme caution. Tables 2 and 3 list a series of offender and situational characteristics thought to be linked with abuse, in particular sexual abuse.[6] These indicators are not gospel and should not be used impetuously and indiscriminately to label someone as a child abuser. Concerned readers should withstand the temptation to cull any one random characteristic, isolated from the slew of other possible contributing factors, as evidence that an applicant will abuse children. Even in combination, accurate prediction based on these attributes is just not possible. The appeal of basing an employment or volunteer placement decision solely on these variables should be resisted for several reasons:

1) all people will not exhibit all traits;

2) these indicators do not quantify the degree of risk (high, medium, low) for abuse and under what conditions it may occur;

3) factors associated with initial abuse are not necessarily the same factors connected to repeated or future abuse;

4) abusive behavior often involves a unique interaction between victim, situational and offender characteristics, which may differ widely among individuals; and

5) no documented evidence of predictive validity exists.

TABLE 2: Possible Offender Characteristics - Predisposing Traits and Behavior Patterns

- frequent and unexpected moves
- low self-esteem and ego-strength
- inappropriate expectations of child behavior
- life stress
- depression
- unable to form attachments
- alcohol and drug use
- dysfunctional home situation
- history of psychiatric problems or mental illness
- skilled at identifying vulnerable victims and manipulating children
- abused/neglected as a child
- feelings of inadequacy and helplessness
- poor impulse control and inability to handle frustration
- limited social contacts as teenager
- premature separation from the military
- unstable work history, min. responsibility
- distorted beliefs about sex and children
- prior arrests (for all kinds of offenses)
- shows sexually explicit material to children
- places premium on doing one-to-one activities with children
- over 25, single, never married
- if married, spouse inadequate, doesn't meet needs
- excessive interest/overinvested in children
- associates and circle of friends are young
- limited peer relationships
- social isolation
- age and gender preference
- refers to children as "clean", "pure," "innocent"
- inadequate understanding of children's developmental phases
- identifies w/children better than w/adults
- legitimate access to children (i.e, occupation)
- activities with children often exclude other adults
- seduces with attention, affection and gifts
- hobbies and interests appealing to children
- youth-oriented decorations in home
- frequent photographing of children
- prefers low visibility activities
- failure to set limits with children

TABLE 3: Possible Situational/Organizational Risk Factors

- institutional constraints and lack of cooperation among various departments
- conflicting interests of staff and clients
- limited resources and staff support systems
- high rate of staff turnover
- perceived organizational inflexibility
- staff/child ratio
- number of children in care (is it at full capacity, over/under limit)
- limited staff training and/or knowledge and understanding of parenting skills
- lack of well-defined and articulated philosophy on caretaking/child management
- lack of written guidelines/safeguards on disciplinary procedures and policies
- organizational stresses (layoffs, budget cuts)
- compliance with laws, statutes and regulations
- minimal amount of informal peer observation
- lack of clear/distinct line of command and central, decision-making authority
- lack of open communication and information systems
- lack of positive, reinforcing environment
- perpetrator's access to child
- presence of non-related caretaker
- lack of opportunities/mechanisms for staff to seek supervisory assistance
- lack of facility director's involvement in all aspects of agency operations
- agency's practice of matching children to caretaker/volunteer
- community visibility and accessibility of setting
- lack of adequate health care/medical tmt
- degree to which certain programs/classes are separated and isolated

As discussed, the presence of the above characteristics is not completely indicative that abuse will occur. However, such attributes can be useful in developing diagnostic tools for evaluation agencies and set the stage for future prediction research. In addition, certain traits may provide triggers for further "investigation," or in some cases, may be grounds for judging an applicant as unsuitable to work with children (e.g., "shows sexually explicit material to children").

Given our understanding about the dynamics of extrafamilial abuse and the fact that to date, efforts to profile and identify offenders have been largely unsuccessful, what other lines of defense are available to child- and youth-serving organizations to prevent abuse by employees and volunteers? Some concerned individuals feel that the time is ripe to step up legislative and regulatory efforts to build a more solid wall in preventing access to children. Attempts to create such a strong legal foundation are not without criticism.

III. NATIONAL INITIATIVES

The desire to more effectively prevent out-of-home child abuse, together with growing fear about agency liability, has accelerated the quest for screening methods to systematically identify child and youth service workers who are unsuitable to work with or around children. In the last decade, this quest has settled in the legislative arena. Since the early 1980s, the trend toward criminal record checks for employment and licensing has intensified, targeting not only the operators and employees of child care facilities, but also teachers and youth development/recreation workers. Federal legislative success, however, has been limited in scope and hampered by lack of funding.

A. Early Efforts

In December 1982, the President's Task Force on Victims of Crime recommended making sexual assault, child molestation and pornography arrest records available to those whose employees come into regular contact with children. In early 1983, Sen. Arlen Specter (R-Penn.) failed to gain the necessary backing for legislation to prohibit employment of any individual in juvenile detention, care, correction or treatment facilities who had not undergone a nationwide FBI check. Later that year, Sen. Charles Grassley (R-Iowa) introduced legislation addressing employment of those with arrest/conviction records for child sexual assault, child molestation or child pornography and proposed creating a centralized registry of all state and federal arrests and convictions for these offenses, to be termed the "Child Care Protection and Employees Responsibility File." Concerns about increased administrative and bureaucratic problems and the potential for abuse of a special federal "sex crimes" file prevented passage of the legislation

(Davidson, 1985). However, the idea of creating a national file of criminal child abuse-related records would resurface.

The "Children's Defense Act of 1984" addressed the cost of criminal record checks; timeliness of the states' reporting of conviction data to the FBI; the FBI's response time to state record check requests; and the security and confidentiality of criminal history records at the state level. This legislation also died in Congress. But Rep. George Miller (D-Calif.) and Sen. Dennis DeConcini (D-Ariz.) thereafter introduced legislation, which passed as the DeConcini-Specter Amendment included in the 1985 Fiscal Year Continuing Appropriations Act, P.L. 98-473. This amendment tied Title XX funding to state laws mandating nationwide FBI criminal record screening of employees in "any facility having primary custody of children for 20 hours or more per week" as well as all juvenile detention, correctional and treatment facilities. Congress gave the states less than a year to draft, enact and have in effect the criminal background legislation, and also directed the Department of Health and Human Services (DHHS) to develop a Model Child Care Standards Act to help guide implementation.

The effect of the DeConcini-Specter Amendment has not been extensive. Not all states enacted legislation for criminal background screening laws, and the program was not funded beyond fiscal year 1985 (Senate Committee on the Judiciary, November 1991). Moreover, the DeConcini-Specter Amendment fell short by failing to address several issues, including: whether the large number of unregulated child care providers should be subject to screening requirements to the same extent as those currently licensed; how the criminal history information should be used in decision-making; to what extent the confidentiality of the criminal history information must be maintained; what steps should be taken to increase completeness of state and FBI criminal record repository data; who should bear the financial burden associated with criminal record checks; what steps should be taken to minimize delays in processing the requests; what consequences should flow from failure to seek or act properly on record information; and what the role of the federal government should be in implementing and monitoring screening. (Davidson, 1985).

The Model Child Care Standards Act, which DHHS issued in 1985 to help assist in the implementation of the DeConcini-Specter Amendment, was not particularly helpful in settling these issues. Although it discussed many of the issues in using criminal history information to screen child care workers and was useful as a general guide to employment history and background check regulations, it contained few specific recommendations on these matters.

Of greater assistance in resolving these issues was a 1986 Model Statute entitled "Employer Access to Sex Offense Criminal History Records." The

Model Statute, developed by the U.S. Department of Justice in collaboration with the ABA's Criminal Justice Section, was a commendable effort in drafting screening legislation. It recommended that all convictions, pending arrests and two or more arrests not resulting in conviction be released to organizations whose employees regularly render services to children. This information was intended to provide employers with a tool to make more informed hiring decisions. Employers were not compelled to conduct criminal background checks on **all** employees because, as stated in the Model Statute, such a requirement "may result in unwarranted administrative and financial hardship for both the employer and the disseminating agency." Nonetheless, to encourage criminal record checks, the Model Statute provided for employer liability to injured children when available sex offense information was not obtained and the subject employee injured a child. Thus, an employer seeking to minimize the risk of liability would conduct criminal background checks. Also of note is the Model Statute's authorization of reciprocal agreements to exchange information with other states and the federal government, thereby providing a framework for the development of a national sex offense criminal history network. However, the Model Statute was simply a guide for state action. Moreover, it only addressed access to sex offenses, and not other relevant criminal history information.

B. More Recent Federal Initiatives

The last several years have brought a flurry of Congressional proposals regarding child abuser registration and screening -- from registering convicted offenders' addresses for 10 years after their release from prison, parole or supervision to permitting child care facilities to run background checks by using the "instant check" system proposed for firearm purchasers.

Only one of these proposals was enacted. In 1990, Congress passed Public Law 101-647, the Crime Control Act of 1990, which included Subtitle E: Child Care Worker Employee Background Checks. Subtitle E mandated state and federal (FBI) fingerprint checks of all existing and prospective employees in federally-operated or federally-contracted child care agencies. In addition, Subtitle E encouraged checks on volunteers, adult household members in places where child care or foster care services are being provided, and others who may have contact with children. To date, no formal documentation exists evaluating the implementation and effectiveness of Subtitle E in screening out potential offenders.[7]

In November 1991, the Senate Judiciary Committee held a hearing to discuss the National Child Protection Act of 1991. The proposed legislation, popularly termed the "Oprah Bill" after its major proponent, talk show host Oprah Winfrey, included the finding that "[t]here is no reliable, centralized national source through which child care organizations, including voluntary

organizations, may obtain the benefit of a nationwide criminal background check on persons who provide or seek to provide child care" (Senate Committee on the Judiciary, November 1991).

The proposed act sought to establish a national background check procedure for child care providers; encourage reporting of all state and federal child abuse crimes to the FBI's National Crime Information Center; and establish minimum guidelines for states to follow in conducting background checks. The proposed bill also required states, within three years of enactment, to achieve at least 80 percent of final dispositions "in computerized criminal history files for all identifiable child abuse cases" in which there had been action within the last five years. Proponents of the legislation argued that creating a comprehensive national background screening system would prevent "literally thousands of dangerous criminals" from obtaining jobs that give them access to children (ibid). Although this effort was not controversial, it died in late 1992 as part of a larger crime bill. Its advocates have continued the fight by reintroducing the legislation in early 1993. Sen. Joseph Biden (D-Del.) and Rep. Patricia Schroeder (D-Colo.) have each introduced criminal background check legislation (S.8 and H.R. 1237, respectively) similar to the proposed 1991 bill.

Congressional leaders and policymakers at the national level are not the only ones in pursuit of a structure to support criminal background screening. Various state regulatory and licensing agencies, too, have strengthened certain employment and licensing requirements to help prevent the abuse of children by child care and youth-service workers. In addition to criminal background screening through the FBI and state criminal history repositories, state-level activities have delved into the use of state child abuse and sex offender registries. (Please refer to Section VI for a discussion of these registries.)

IV. STATE SCREENING LAWS: A MYRIAD OF APPROACHES

State screening laws generally fall into two categories: (1) licensing standards requiring or permitting a licensing agency or licensed facility to use certain screening methods, including criminal background checks, in issuing licenses or hiring employees/ volunteers who work with children; and (2) provisions permitting organizations access, through an authorized state agency, to child abuse or state and/or federal criminal records for screening purposes. Within each of these categories, there is wide variety in scope and application. Further, not all state legislation authorizes child-serving and volunteer organizations access to records in screening workers. Thus, the ability to conduct criminal background checks before hiring a child care or youth-service worker may be limited by the reach of the licensing statutes.

A. Licensing

All states have some legislation regulating day care facilities and in most states, this includes a requirement to screen at least some of the workers using criminal records. However, as the literature reveals, the types of facilities covered, the extent to which screening of workers is required, and the scope of the screening, varies considerably (Bulkley and Jackson, 1989).

State licensing and registration provisions generally cover specific categories of facilities, which may or may not encompass the myriad of entities that provide care for children. Typically, states may require criminal history record screening in one or more of the following settings: (1) child care centers, (2) group homes, (3) child-placing agencies, (4) child-caring institutions and residential settings, (5) independent foster homes, (6) family day care homes, (7) educational facilities, (8) sources of transportation to educational facilities, and (9) adoptive homes (Davidson et al., 1991).

Adams (1990) provides interesting statistics documenting some of the variety in types of child care facilities regulated:

- Although one-third of all child care centers are operated by religious institutions, 14 states (28 percent) fully or partially exempt such child care programs.
- A substantial majority of the states (59 percent) fully or partially exempt those programs operating in public schools.
- More than half of the states (55 percent) exempt all youth programs operating in adult recreational facilities from all licensing requirements.

There is further variety in screening based on the category of worker. With respect to criminal record screening requirements, some states exclude people who have resided in the geographic area for a substantial period of time. Some states also exempt from the screening process people who do not have contact with children or who are always supervised by someone while in the presence of children (such as limited time volunteers). In addition, screening requirements may or may not apply to parent-volunteers (Davidson et al., 1991).

Compounding the variety in terms of facilities and persons covered, state regulations of child care and youth-serving personnel vary with respect to the screening methods used. Required methods may include employment history and reference checks, local and statewide criminal record checks (by name or fingerprints), FBI criminal record checks (requiring fingerprints and generally done through a state agency), child abuse registry checks, and sex

offender registry checks. (Please refer to Section V for a detailed discussion of criminal record checks.)

Several states having fairly comprehensive screening legislation are discussed in the literature. Florida, for example, enacted legislation in 1985 requiring screening of employees, operators, volunteers and job applicants of child care, residential facilities, mental health, alcohol and drug abuse programs, and certain other programs. The screening methods mandated in Florida include state and federal criminal background checks (by fingerprint) and employment history checks.[8] New York also has broad screening legislation. New York City's screening regulations, implemented in 1984, require checks with past employer references, criminal background checks (by fingerprint), and checks with the state list of New Yorkers indicated for child abuse and neglect by the Department of Social Services (Rollins, 1985).

B. Access to Criminal History Information

Access to information contained in criminal files is generally restricted. In recent years, however, there has been a trend towards making criminal history information more available to noncriminal justice agencies, private individuals and organizations, and the public. States have passed laws authorizing criminal record access to youth-serving and volunteer organizations that provide care, treatment or services to children. As Thomas Wilson of SEARCH Group, Inc. pointed out in 1988, "[T]he movement towards open records is happening in a de facto manner: through piecemeal legislation, through forces for change by interest groups going to their legislatures, by the challenges brought forth by groups such as the Reporters Committee for Freedom of the Press, by changes in FBI policy and by increasing access to criminal history record information by federal noncriminal justice agencies" (Bureau of Justice Statistics, November 1988b). In addition, some states have enacted public records laws that, to a greater or lesser extent, make criminal history records available to private entities (Bureau of Justice Statistics, November 1988a). But despite the trend, the Bureau of Justice Statistics (BJS) maintains that criminal justice officials still enjoy some discretion regarding noncriminal justice use of records: "[I]n many states the actual extent of noncriminal justice access to records held at the repository is more limited than it would appear from a reading of the state statute" (ibid).

Specific Access Legislation

Variety continues to be the watchword with respect to legislation granting private individuals and organizations access to criminal records for employment screening purposes. As the ABA Center on Children and the Law found, some states permit access regarding persons applying or volunteering for positions in which they will have supervisory or disciplinary power over a

minor; others allow access to youth-service agencies or certain entities providing recreational, social, educational or child safety services to children (Davidson et al., 1991). Robert Belair, a Washington lawyer and general counsel for SEARCH Group, has observed some general patterns in state legislation granting noncriminal justice entities access to criminal history records, including the "clear distinction between conviction information and nonconviction information: state agencies demonstrate some willingness to release the former and almost no willingness to release the latter" (BJS, November 1988a).

In permitting access to criminal history information under these circumstances, a few states have set forth eligibility requirements that a private entity must meet in order to be able to obtain the information. For example, Arizona, Illinois, Iowa and Kentucky have established an authorized body to review an entity's request and decide whether its activities fall within statutorily authorized boundaries. Other states require volunteer organizations seeking criminal record access to enter into agreements setting forth the access terms, including indemnification, information security and confidentiality. For example, Kansas has "non-disclosure agreements" and Illinois has "private organization volunteer agreements" (Davidson et al., 1991).

Public Records Laws

During the past 15 years, states began enacting, (and others recently began considering) versions of public records laws. In some states, these laws are quite far-reaching. Florida, for example, permits anyone to request the state criminal record of any other person upon payment of a fee and the provision of certain information regarding the subject (name, sex, race, date of birth, social security number and address). Other states are more restrictive and may expressly require a subject's consent or effectively do so by requiring certain information, such as fingerprints, state identification number or a description of the specific, reportable event identified by date and agency or court. In addition, until 1990, at least one state (Texas) had interpreted its records law to disallow access to criminal record information. Texas' open public records law was amended in 1990 and the Texas Attorney General subsequently issued an opinion that an individual has a special right of access to his/her criminal records and may authorize someone else to obtain those records (ibid). The National Conference of Commissioners on Uniform State Laws adopted model state legislation making conviction data available to the public, provided that requesters supply certain important information; all nonconviction information would be unavailable (BJS, November 1988b).

Child care and youth-serving organizations in these states may be able to conduct criminal record checks, at least with respect to state records, by complying with the requirements set forth in the public records laws.

V. USE OF CRIMINAL RECORD CHECKS FOR PRE-EMPLOYMENT AND LICENSING PURPOSES

In the past two decades, the creation of a national criminal history information system has flourished. Although criminal history information systems were originally designed with the sole needs of criminal justice agencies in mind (e.g., using the records for investigation, arrest, bail setting and sentencing purposes), today's typical "user" of criminal history information is likely to be a noncriminal justice agency seeking to make a more informed hiring or volunteer placement decision. This leads not only to questions of whether criminal records are accessible to public and private employers, but also to what extent such use is appropriate and effective in screening out potentially abusive child care and youth-service workers.

Given the nature and intensity of state and federal legislative and regulatory efforts regarding criminal background checks, one is inclined to believe that use of criminal history information by public and private employers is indeed appropriate. Whether it is highly effective in weeding out employees/volunteers who may harm children is of great debate.

According to Davidson (1986a), "Although new pre-employment record screening laws have become the single most common legislative response to the out-of-home abuse problem, their immediate promised impact of 'screening out' child molesters has been minimal." Of major concern is the quality, relevance and likelihood of obtaining criminal history records. Many insist that arrest and conviction records paint a limited picture of the prevalence of the child abuse problem.[9] In their work with convicted sexual offenders, Groth and his colleagues (1982) found that offenders committed from two to five times as many sexual assaults as appear on record; child molesters admitted to an average of five offenses for which they were never caught.

So Why Conduct a Criminal Record Check?

Probably the two most predominant counterarguments to skeptics of criminal record checks are that (1) identifying even one child offender may save hundreds of children from abuse and (2) conducting criminal record checks deters many potentially abusive individuals from applying to positions which give them access to children. (The deterrent claim, however, presumes that an individual has a criminal record on file waiting to be disclosed.) Child- and youth-serving organizations may also employ criminal record checks because the checks serve as an objective, independent source of background information and are not contingent on an individual's willingness to be candid. In addition, criminal record checks serve as a visible indicator of an organization's commitment to preventing abuse and are fast becoming a necessary protection against liability and negligence.

A. Background on Criminal History Information Systems[10]

Pursuant to federal legislation, the U.S. Attorney General collects and maintains criminal records. The Attorney General is authorized to exchange this information with state and local governments and law enforcement entities; a responsibility the Attorney General has delegated to the Federal Bureau of Investigation (FBI). Currently, the FBI maintains criminal record information through (1) the FBI Identification Division, which houses the fingerprint record repository and (2) the National Crime Information Center (NCIC), which contains the Interstate Identification Index (III). The latter is a telecommunications system linking federal and state files, which also interfaces with the FBI Identification Division.

The FBI has maintained a national criminal history record repository in the FBI Identification Division since 1924. The development of computerized information systems did not arise until 1967, when the NCIC was established to provide criminal justice agencies with 24-hour-a-day access to automated files on wanted and missing persons and stolen property. This advancement led to the implementation of an on-line Computerized Criminal History system (CCH) in 1971, which served as a national repository of offender criminal history files for law enforcement purposes only. CCH was phased out in the late 1970s, due to lack of participation by the states, and replaced with the Interstate Identification Index (III).

The III facilitates interstate and federal/state exchange of criminal history records for **both** criminal and noncriminal justice purposes (e.g., employment and licensing) and serves as a "pointer" to refer agencies to more complete state or federal files. When fully operational, the III will serve as a national index to link together state repositories. Of the 20 states currently participating in III, an average of 52 percent of the files are available. An additional 22 states plan to participate within five years (BJS, March 1991). Criminal records of non-participating III states are only available through a standard FBI fingerprint check.

As of December 1989, there were over 45.6 million individual offenders in state criminal history repositories; an increase of almost 32 percent from 1984. Over 6 million arrest fingerprints were submitted to state repositories in 1989 alone (approximately one-fourth of which were returned as unacceptable). At the federal level, the FBI maintains over 26.4 million criminal records; 14.4 million of which are automated and available through III (BJS, January 1992). In March 1991 alone, the FBI received approximately 427,000 criminal fingerprint cards, of which over 8 percent were returned because they were illegible and could not be classified. (This translates to an annual rejection rate of close to 400,000 prints, many of which are never resubmitted.) Also in that one month, the FBI received

approximately 223,000 dispositions and processed 1.4 million III name-check requests. Some 346,000 III fingerprint record requests came in follow-up to the name checks (ibid).

It should be noted that the FBI generally cannot disseminate criminal records directly to private employers, but organizations can access FBI records through a designated state agency which serves as the authorized middle-man.[11] In addition, access to juvenile records is limited. A November 1989 Bureau of Justice Statistics survey reported that 75 percent of state law enforcement agencies have policies for sealing juvenile records, 79 percent for expunging such records. However, President Bush's March 1991 Violent Crime Control Initiative led to the authorization of the FBI to collect records of juvenile offenders from state agencies willing to cooperate. While states are not **required** to forward juvenile records to the central repository, they now may be encouraged to do so (Ritchie, 1993).

B. Child Offender Arrests and Convictions Are Lacking

Despite what seems like a voluminous amount of criminal history records on file, arrest and conviction records for child offenders are often hard to come by. The Select Committee on Children, Youth, and Families (March 1987b) asserts, "While nearly all States report involvement of Child Protective Services with law enforcement agencies, they cannot report the rate of indictment, prosecution and/or convictions related to child abuse and neglect, nor are they able to report the percent of substantiated cases of abuse and neglect which are referred to law enforcement authorities." The Department of Justice acknowledged that "Many [extrafamilial child sexual abusers] have previously been arrested for violent or exploitative acts against children -- some a number of times. However, if they have not been convicted . . . privacy laws deny their employers or potential employers access to their records." The result, according to the Justice Department, is that "the vast majority of arrested child sex abusers are able to go from job to job with little fear that arrests in connection with previous employment will ever be discovered by future employers" (U.S. Department of Justice, May 1986).

Arrests for child offenses grew faster than any other type of arrest from 1969 to 1990, yet the Justice Department has indicated that 90 percent of all child abuse cases do not go forward to prosecution (Senate Judiciary Committee, November 1991 and May 1989). The "funnel effect" characteristic of other felony offenses, (i.e., at each stage of the adjudication process the number of offenders dwindles, leaving only a few to be sentenced to terms over one year), is also prevalent in child abuse crimes (BJS, December 1984).

Other studies confirm this phenomenon. Los Angeles school district officials revealed that of the over 8,300 reported child abuse cases in 1988-89, only 7 to 10 percent were actually prosecuted, about 3 percent ending in convictions (*Daily News*, December 1990). And Finkelhor and Williams (1988) found that of all substantiated sexual abuse cases in day care, just over a quarter (26 percent) ended in conviction. Although the large majority of those convicted spent time in prison (88 percent), more than half could expect to be back on the streets before their victims finished the first grade.

When the scope is broadened to include substantiation of any type of criminal behavior, the statistics are not much different. The Bureau of Justice Statistics reports that about 6 percent of the people are responsible for as much as 70 percent of the violent crimes (BJS, January 1992). The probability of arrest for most crimes is 15 percent and when an arrest does occur, the charges are dropped or dismissed in over half of the cases (House Subcommittee on Civil and Constitutional Rights, October 1987). Of all felony arrests presented by police for prosecution, 52 percent are rejected at screening, dismissed or diverted without plea before trial, or result in an acquittal. Fewer than 25 percent of those arrested are found guilty of the offense for which they were arrested. In addition, the Bureau of Justice Statistics found that the percentage of felony arrests resulting in felony convictions is as low as 6 percent in some states (ibid).

C. Likelihood of Discovering a Person with a Criminal Record

Based on what we now know about arrests and convictions, the pervading question then becomes: What are the chances that a criminal background check on those working with children will reveal prior criminal activity? For child offenders, it is slim -- and this is one of the biggest criticisms about the use of criminal record checks for screening purposes. The case of John W. Shaver, a former day care center operator, illustrates this problem. In 1983, the state of Hawaii revoked Mr. Shaver's day care license after complaints of child abuse. No criminal charges were brought against Shaver in this case; however, about a year later, Shaver pleaded guilty to a misdemeanor count of operating another preschool from his Hawaii home without a license. Shaver left Hawaii and two years later opened a day care center in Florida, where he was arrested and charged with possession of child pornography. While Florida had conducted a criminal background check on Shaver, nothing turned up because the Hawaii case did not involve criminal charges (*Honolulu Advertiser*, February 4, 1990).

In fact, the likelihood that any child abuser will have a criminal record ranges from 1 to 15 percent, averaging around the 5 percent mark (BJS, April 1987; Davidson et al., 1991; DHHS, 1985; Finkelhor and Williams, 1988). Even if there is a record of a sex offense, it does not always indicate if the

victim was a child or an adult. In addition, while 95 to 97 percent of day care workers are female, 80 to 85 percent of FBI records are on males, further limiting the probability of identifying a female offender (DHHS, 1984a).

Most statistics on criminal record "hit" rates are discouraging, often landing below 1 percent and sometimes creeping above 5 percent. The Senate Judiciary Committee (November 1991), however, did issue an encouraging word: within one year, six states using criminal background checks identified more than 6,200 individuals convicted of serious criminal offenses (including child abuse, sex offenses and violent crimes) who were seeking jobs as child care providers. (Readers should be aware that because the total number screened was not indicated, the actual percentage hit rate cannot be ascertained.) Other findings provide a more complete, although less favorable, picture of criminal record checks. Below are several states' experiences in conducting criminal record checks to screen out unsuitable child care and youth-service workers:

- Out of the 115,333 people screened in FY '91 against the Texas Department of Public Safety criminal histories, only 860 (.7 percent) had relevant criminal history matches; out of 309 FBI fingerprint checks done on new Texas residents, only 9 (3 percent) were identified as having a criminal history (Senate Judiciary Committee, November 1991).
- Fingerprint checks on over 21,700 New York City child care workers yielded only 170 hits, a less than 1 percent hit rate. Only 14 were for sexual offenses and 4 for endangering the welfare of a child; almost half of those with records were custodial staff (Gordon, 1986-87).
- Only 2 of 3,000 people screened in Florida (.07 percent) were identified as having criminal histories, only one of these for sex crimes (DHHS, 1985).
- A statewide fingerprint check of 570 day care operators/employees in Georgia resulted in only a single "hit" (.2 percent); name checks of 2,400 identified only 2 others (.08 percent) (DHHS, 1985).
- Out of 2,000 checks on foster and adoptive parents in Connecticut, less than 75 had a criminal record, a rate of about 4 percent (Davidson et al., 1991).
- Of the 9,000 child care providers checked in Massachusetts during the first half of 1990, 46 were disqualified and 25 were approved with convictions; this translates into .8 percent with any type of conviction, but only .5 percent that were deemed relevant (Davidson et al., 1991).
- In New Hampshire's first year of criminal background checks on all day care providers, employees and adult household members, only 8 applications out of about 250 processed (3.2 percent) were denied (*Boston Globe*, November 25, 1984).
- In 1987, Broward County's police department processed criminal record checks for 5,315 potential school employees and denied from 4 to 6 percent of applicants due to felony convictions, the majority of which were for drug offenses (Zakariya, 1988).

D. The Growing Use of Criminal Records for Employment and Licensing Purposes

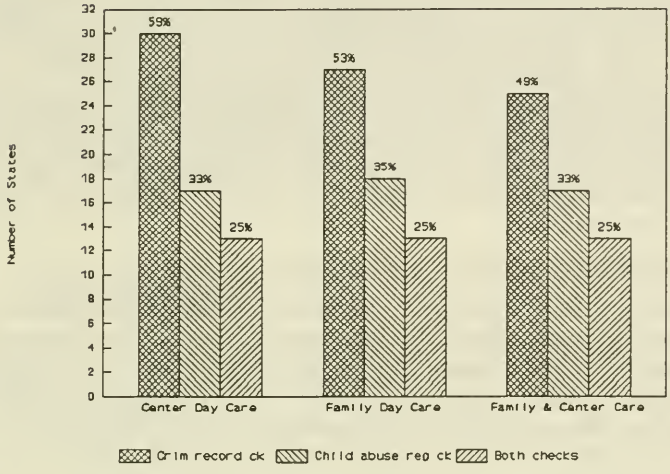
The controversy surrounding the use of criminal records for employment and licensing purposes has escalated with the growing number of noncriminal justice agencies adopting this practice. In some states, the number of requests from noncriminal justice agencies for employment and licensing purposes has exceeded that from criminal justice agencies. The Office of Technology Assessment (1982) found that 53 percent of all FBI records requests were made by noncriminal justice users, with the Department of Defense and the Office of Personnel Management accounting for about 30 percent and state and local agencies for the other 23 percent. As of 1983, over 3.7 million criminal records had been reviewed for employment purposes (Gordon, 1986-87).

The range of employers and licensing agencies that can access state and federal records is growing rapidly; there are now over 64,000 authorized users of the FBI system (BJS, March 1991). New York allows or requires government agencies, schools, day care programs, museums, hospitals, banks and law enforcement agencies to screen criminal records for employment purposes -- and nonconviction data may be disseminated. California authorizes screening for auto mechanics, barbers, cosmetologists, optometrists, liquor store owners, pest control employees, real estate brokers and notary publics, among others. Youth-service organizations in California can also access records.

A report examining the effects of Florida's open records policy found that some 760 agencies and organizations that can search the state records -- including health care, youth programs, foster parent and adoption agencies, schools, and substance abuse programs -- filed approximately 167,000 criminal record requests in fiscal year 1988. This was an increase of 29 and 57 percent over fiscal years 1987 and 1986 respectively. Requests for the first three months of fiscal year 1989 represented an almost 21 percent rise over the same period in 1988; an increase attributed in part to the prevalence of drug and child abuse offenses and the risk of liability (SEARCH Group, Inc., March 1990).

As indicated in Figure B, Hayes and her colleagues (1990) found that 27 of the states (53 percent) conduct criminal record checks on **family day care** providers; 29 states and the District of Columbia (59 percent) conduct criminal record checks on **center care** providers; and about half of the states (49 percent) conduct criminal record checks for **both** family day care and center care providers. (Figure B also exhibits the number of states conducting *child abuse registry checks* for family and center day care workers. Screening against child abuse registry checks is discussed in Section VI.)

Figure B: State Regulations of Family & Center Day Care, Caregiver Screening



Source: Hayes et al., 1990

In the public school system, Titus and DeFrances (1989) surveyed over 1,100 public schools and found that 58 percent conducted criminal record checks, most commonly by name and social security number; fingerprints and aliases were used half as often. Local, state and federal law enforcement were the most common sources of information, while courts and sex offender or child abuse registries were seldom used. The authors also found that of those schools conducting criminal record checks, all do checks on applicants for permanent employment; most on temporary, part-time and/or substitutes; and less than half on volunteers or employees of subcontractors. And in a study of screening procedures used by Big Brothers/Big Sisters of America, Carrilio (1987) found that 79 percent of the agencies use local arrest and conviction records; 67 percent use state records; and 25 percent request federal records.

E. Criminal History Information and Data Quality Issues -- Cause for Concern

Completeness of Records and Disposition Reporting

A fundamental and often-cited deficiency of criminal history records concerns disposition data. Two-thirds of the states report that they sometimes receive dispositions that can't be linked to arrest information; on average, about 18 percent of dispositions can't be linked to existing records. In addition, about 30 percent of the states have backlogs in entering dispositions into the database (BJS, March 1991). As of mid-June 1991, the FBI had its own backlog of over 3 million criminal records waiting to be updated and 500,000 new files that had yet to be entered -- a problem requiring $12 million to fix (BJS, January 1992).

At a 1991 conference to discuss improving the quality of criminal history records, then-Attorney General Thornburgh chided the incompleteness of criminal history records, noting that there is only a two in three chance of seeing any criminal record when a name (of someone who does in fact have a criminal record) is entered. This is due in part to the fact that over 8 million records are not computerized and 40 to 60 percent of the over 24 million names in the FBI files do not have a disposition (BJS, January 1992).

Differences exist between states not only in the scope of disposition reporting to criminal history repositories, but also on whether it is mandated. A SEARCH Group report on the interstate exchange of criminal history records concluded that there are disadvantages to relying on the laws and policy of either the requesting or providing state agency and urged the development of national standards agreed to by all participating states (SEARCH Group, May 1981). According to a January 1992 Bureau of Justice Statistics report:

- 32 states and the District of Columbia require that decisions not to prosecute be reported to the repository;
- 41 states mandate reporting of felony trial court dispositions;
- 36 states require reporting of state prison admission and release information on felonies;
- 23 states require reporting of local correctional facilities admission and release information on felonies;
- 30 states require parole data and 30 require probation data to be reported; and
- Only 24 states require that the arresting agency report a decision not to charge the person.

The Bureau of Justice Statistics, in its 1985 report on the data quality of criminal history records, found that "in more than half of the states, repositories do not have authority to compel agencies to report arrests or dispositions" (BJS, October 1985b). Although 19 states legally require fingerprints of those brought up on felony charges be submitted to the repository, 10 states report that fingerprints are actually obtained and submitted in 10 percent or less of the applicable cases; the remaining 9 states estimate that about half of cases are submitted (BJS, March 1991). Most studies on disposition reporting deal with *state* systems exclusively, leaving little knowledge about reporting rates in *local* criminal history record systems (op cit). However, a 1982 Office of Technology Assessment study did find that when FBI files were compared with local source data, 20 percent did not agree.

Timeliness of Criminal History Information - Both in Receiving Records and Processing Requests

Many noncriminal justice agencies conducting criminal record checks complain about the lengthy turnaround-time it takes to receive results. State government agencies requesting information from the FBI reported an estimated processing time of 6 to 8 weeks. Turnaround-time for state fingerprint checks ranged from several days to 6 weeks, while most state name checks took no more than 15 days. Youth-serving agencies, however, reported record processing delays "of many months." Limited funding, lack of automation, and non-readability of fingerprints were all cited as contributing to delays (Davidson et al., 1991). Timeliness is especially problematic for child- and youth-serving organizations given the high turnover rate (sometimes reaching 50 percent) among some child care workers. This constant need for replacement staff makes a wait of several weeks, let alone several months, quite burdensome. And provisional hiring, i.e. permitting an employee/volunteer to work pending the check seems to at least partially defeat the purpose of the checks -- to prevent access to children by potentially abusive persons.

On the provider end, timeliness is also a problem for state criminal history repositories both in terms of receiving and entering information from various law enforcement sources. According to a January 1992 Bureau of Justice Statistics report, 9 states report backlogs in entering arrests and 13 states report backlogs for entering dispositions into the database. The time lapse between arrest and receipt of arrest data by repository ranges from 1 to 42 days; disposition reporting ranges from 1 day to 1 year (for one state); and correctional facility admission information is reported in 1 to 90 days. Additional BJS findings (March 1991) reveal that the average number of days between receipt of information and entry into the master name index and the criminal history database is 29 and the average number of days from final trial

court disposition and entry into the criminal history database is 79 (ranging from less than 1 day to 952 days).

Processing Fees

At the writing of this report, the FBI charged employers and licensing agencies $23.00 to conduct a national fingerprint check; $21.00 of this covers the FBI's outlays and $2.00 goes to the states to defray handling costs. Federal agencies, such as the Department of Defense and the Office of Personnel Management, enjoy a reduced rate of $17.00. Individuals wishing to get a copy of their own criminal history records under the Freedom of Information Act also pay $17.00, although the FBI strongly asserts that records obtained under the FOIA cannot be used for employment purposes.

Almost three-fourths of the states and the District of Columbia will do a criminal background check *by name*, charging anywhere from no fee to $25.00; fees for the 13 states that do a *fingerprint* check range from $3.00 to $27.00. New York will not process a criminal background check unless it has an authorized agreement with the requesting agency.[12]

Accuracy of Criminal History Information

Complaints regarding completeness and timeliness are joined by concerns about the accuracy of individual criminal histories. A national study of police arrest statistics from 1980 to 1982 showed that "arrest statistics are not comparable across police departments, because there is widespread violation of the rules and procedures established by the FBI for compiling arrest statistics" (*Police Foundation Reports*, 1984). This becomes problematic since, as Gordon (1986-87) claims, inaccurate criminal records have more impact because they now "travel farther, are seen by more people, are copied and recopied, and have more uses."

According to the BJS November 1988 report, *Public Access to Criminal History Record Information*, release of information may be unfairly damaging to an applicant in circumstances where a record: (1) relates to a different person; (2) is inaccurate or incomplete; (3) is accurate and complete, but it relates to a conviction or arrest which is unconstitutional or otherwise improper; and (4) is accurate and complete, but "old" and no longer reflective of person's character. These circumstances may be more prevalent than anticipated: A national survey revealed that about 20 to 35 percent of criminal history records at the state and local levels are materially inaccurate or ambiguous (BJS, October 1985b). And Gordon (1986-87) states that each day at least 12,000 inaccurate or invalid reports on wanted persons alone are sent by state and local law enforcement agencies to NCIC; a mistake often requiring a court order to rectify.

Barriers to Obtaining Quality Information

Part of the problem in obtaining quality information has been a lack of recognition of the importance of criminal history data. Most criminal justice agencies, including the FBI, "generally have viewed their primary information mission as . . . *policing* the information, and not as *providing* information to people in order to drive decisionmaking" (BJS, January 1992). Obstacles to receiving suitable information identified at the state level include: poor internal written procedures, poor validation procedures, failure to submit arrest/fingerprint cards and/or dispositions, poor documentation of original reports, and poor hit confirmation procedures (House Subcommittee on Civil and Constitutional Rights, July 1986).

The push for improved data quality is not a new concept; as of 1986, 49 states had adopted data quality legislation. Despite these efforts, "significant and unacceptable data quality problems remain" at federal, state and local levels and improvements have been "uneven and ultimately unacceptable" (ibid). The January 1992 BJS report, *National Conference on Improving the Quality of Criminal History Records*, identified the following factors as inhibiting satisfactory data quality:

(1) absence of clear correctional philosophy, which leads to questions of what data to collect, how it should be used and what level of quality is acceptable;

(2) proliferation of correctional programs which result in information being left behind when an offender moves from one program to another;

(3) lack of uniform definitions in correctional terminology from one jurisdiction to another;

(4) failure to understand information systems in the development of effective crime control; and

(5) increased and perhaps excessive demand of accountability, leading to a reliance on quantitative versus more appropriate qualitative goals.

Strategies for Improving Data Quality

As discussed, the fact that criminal records are being made increasingly available to noncriminal justice agencies for licensing and employment purposes raises serious concerns about quality of the information provided. Compounding the problem is the fact that our criminal justice system is incredibly fragmented; there are over 16,000 city, county and state law enforcement agencies (Nemecek, 1990). "The mobility of our society, the maze of procedures and the sheer number of offices involved have made a systematic method of access nearly impossible" (Long, 1992). This fragmentation of the criminal justice system affects not only basic operations, but the willingness and ability to transfer information.

The Bureau of Justice Statistics (October 1985b) outlined several broad improvement strategies, the most important of which included prioritization of the data quality issue; improving relationships between repositories and the courts; increasing automation; and obtaining adequate funding levels. Further, BJS recommended examining the issues from the *user's* perspective, not just the data manager's. An April 1989 follow-up report specified additional improvement measures:

- Conduct periodic baseline audits to evaluate data quality procedures and assess completeness and accuracy of records.
- Develop uniform documents, forms, offense codes and reporting procedures to improve communication and cooperation.
- Develop a single, system-wide tracking/case numbering system to link reported data to the appropriate individual and case cycle; this would include ability to track by specific charges (e.g., child abuse).
- Institute laws requiring mandatory reporting by all states to central repositories and specify penalties for noncompliance.
- Provide standardized training, both at entry level and on continuing basis, for data entry and documenting personnel.

In response to the uneasiness over less-than-optimal data quality, the Crime Control Act of 1990 required states to set aside at least 5 percent of their block grant funds for the improvement of criminal justice records (e.g., completion of records, full automation, reporting to the FBI). In addition, the Bureau of Justice Statistics began administering a 3-year, $27 million Criminal History Record Improvement Program (CHRI) to increase states' disposition reporting and flagging of felony records in the database (BJS, January 1992). As of February 14, 1992, over $16.2 million CHRI funds had been awarded for state activities that include:

- Alaska processing a backlog of 60,000 criminal history records
- Arizona clearing a backlog of 95,000 dispositions
- Arkansas processing its backlog of over 70,000 arrests made within the last 5 years that do not contain dispositions
- Georgia eliminating a backlog of 348,000 fingerprint cards and disposition reports
- Maryland developing a "live scan" booking system to help with arrest processing
- Oregon reducing a disposition backlog of 32,000
- Tennessee automating to clear a 5-year backlog of dispositions
- Wyoming automating 7,800 manual records

Point-of-Sale Systems for Licensed Gun Dealers: A Useful Model?

Improving the quality of criminal history information and developing more effective computer systems is important to many states, if not for the purpose of screening out child offenders, then for attaining greater gun control and reducing violent crime. Several states have instituted strategies to achieve the latter. Over 40 percent of the states (20) currently conduct criminal record checks of their state repositories in connection with the sale of firearms; two of these states also check the FBI files and 10 also screen against the III (BJS, March 1991). These point-of-sale systems may serve as models in developing a type of "point-of-employment" system that child- and youth-serving organizations can access.

The Bureau of Justice Statistics (January 1992) explains that in Delaware, Florida and Virginia, point-of-sale systems allow licensed gun dealers to contact the state police through a toll-free number to instantaneously review a potential buyer's criminal history records and obtain approval or rejection for the gun sale. All three states offer this information free of charge to licensed dealers, (Delaware estimates it would have to charge only $8.00 per transaction to break even), and the average time for confirmation is less than 10 minutes. During Delaware's first 5 months of the program, over 4,680 calls were received from 350 gun dealers; about 9 percent of sale inquiries were disapproved. During just 4 months in 1991, Florida received approximately 74,000 inquiries and denied about 4 percent. (For records lacking a disposition, Florida has 24 working hours to obtain a disposition or the sale is automatically approved.) In the first 18 months of Virginia's program, which serves over 4,000 firearms dealers, some 90,655 transactions were processed, about 2 percent of which were rejected. Virginia's system does both state and national checks for the dealers and it's biggest reported problem in implementing the system has been accessing out-of-state records and interpreting the different methods of reporting and disposition information. Virginia's first-year costs for the program were just over $310,000. The fact that licensed gun dealers may enjoy a somewhat higher "hit rate" for point-of-sale inquiries than child- and youth-serving organizations which conduct criminal record checks may be due in part to differences between child care and youth-service workers and gun-buying clientele.

F. Disadvantages and Criticisms of Criminal Record Checks

Given the continued fervor in trying to extend the use of criminal record checks for screening purposes, the U.S. Advisory Board on Child Abuse and Neglect voiced concern over whether a major federal initiative might result "in new layers of bureaucracy and new reams of paperwork" rather than increase the level of child protection (Select Committee on Children, Youth and Families, September 1991). Others have expressed

complaints about the absence of uniform regulations and centralization of control regarding criminal records, which could wreak havoc for organizations requesting out-of-state records.

In addition to the managerial headaches that can accompany criminal background checks, adversaries fear that such screening may foster organizational complacency and overconfidence in the selection of employees and volunteers. Critics worry that using criminal record checks may lead to a false sense of security and organizations will be less apt to subject applicants to supplemental, and perhaps more elucidating screening procedures. If criminal record checks identify offenders at all, it is likely they will capture only one type of offender. This is problematic because, as discussed in the beginning of this report, the offender population is a diverse one, complete with unique offender subgroups exhibiting different character traits.

Add to all of this, distress over the amount of financial and human resources needed to conduct criminal record checks, and what emerges is a difficult struggle between the need to protect children and the desire to keep an organization functional and within budgetary constraints.

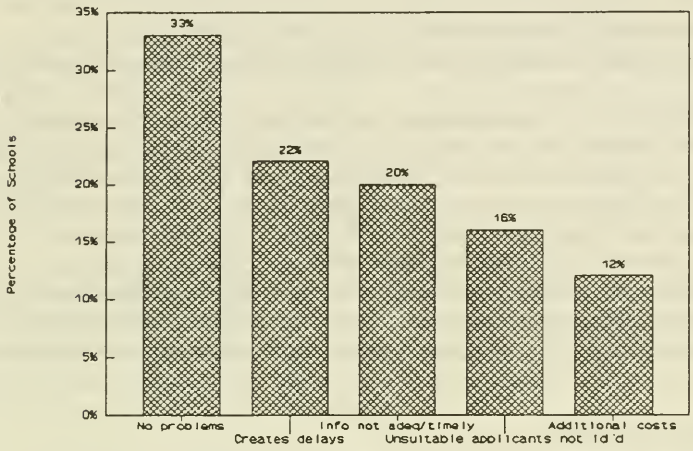
Administrative and Procedural Problems

Conducting criminal record checks has been known to consume precious personnel time and sometimes throws a kink into otherwise routine staff selection and hiring procedures. While one-third of public schools reported experiencing no problems in using criminal record checks for prospective workers some difficulties did arise, including hiring delays and unsuitable applicants not identified (see Figure C). Other comments by public school survey respondents included a preference for dialogue over use of mailed written forms to facilitate more open-ended, exploratory discussions about an applicant's performance, character traits and suitability. In particular, the schools liked indirect questions about why the applicant left his/her last job rather than direct questions about criminal activity and related behavior. Ditter (1986) also noted that in screening for child abuse among staff, many organizations opt for more subtle, less offensive approaches.

Fairfax County and Arlington school officials uttered dissatisfaction with federal checks because they applied to a limited number of offenses and missed records of fraud, drug charges or illegal gun possession (*Fairfax Journal*, January 8, 1990). More recently, Fairfax County schools were forced to relax their fingerprint requirements for substitute teachers due to the 10-week turnaround time and high turnover rate in the substitute teacher pool (*The Washington Post*, October 22, 1992). Louisiana schools and day care centers have also complained that the police are "too slow in processing criminal history reports," taking up to 18 months to complete the reports and

thereby providing a window of opportunity for individuals to gain access to children. "The bottom line is that offenders are getting a 15- to 18-month shot at somebody's child," according to the state police's supervisor of criminal and traffic records. The main problem, police say, is outdated processing equipment (*Times-Picayune*, March 11, 1991).

Figure C: Problems Resulting From Criminal Record Checks As Reported By Public Schools



Source: Titus and DeFrances, 1989

Even London's Department of Social Services has been plagued by administrative problems in conducting criminal record checks. In light of growing public concern about the risks to children of abuse from employees, London introduced a criminal background check system in 1986. However, disputes with the police over who would be liable if the information provided was incorrect forced some authorities to abandon the practice. Due to the large number of employees involved, including minicab drivers who transport children, the system became bogged down and delays of up to eight weeks forced job applicants to look elsewhere for employment (*New Society*, July 31, 1987).

One additional administrative glitch is the need for staff trained in how to actually fingerprint an applicant. This may seem like a minor detail, but sending a set of illegible fingerprints to the FBI or state criminal history

repository and having to repeat the process wastes valuable money and time. Illinois' licensing agency for child-related activities reported that in 1990, almost half of the fingerprints obtained for screening were unclassifiable, some of which could not be read and had to be resubmitted (Davidson et al., 1991).

Need for Interagency Coordination

Lack of coordination and cooperation among law enforcement, state regulatory/ licensing bodies and community agencies further complicates matters. For example, when a child fatality is subsequently investigated by police, child protective services may not be involved; therefore, if a person kills a child under circumstances that do not result in prosecution or conviction, the state central child abuse registry does not reflect the matter.

This dearth of communication is not limited to child welfare services: an analysis of teacher revocation notices received from 49 states by the Florida Department of Education for a five-year period found that Florida officials were not informed about as many as 35 percent of the certificates revoked by other states (*The News Chief*, September 25, 1984). Factors hindering interagency cooperation include the large number of public and private agencies involved; diversity in licensing and regulatory standards; the complex nature of extrafamilial abuse; and the absence of a uniform definition and consensus on what constitutes abuse in out-of-home settings (Nunno and Motz, 1988).

Financial Concerns

In these tight economic times, it is not surprising that a significant amount of scrutiny would center on the cost-effectiveness and cost-benefit of criminal record checks. In Pennsylvania it was determined that the state would have to spend $6 million on background checks, pursuant to the DeConcini-Specter Amendment, to gain an additional training allocation of $633,000 (*Special Reports*, April 14, 1986). The U.S. Department of Health and Human Services (1985) calculated that to screen 1 million employees as per the amendment at $25.00 for both state and federal fingerprint checks (the going price almost a decade ago) would cost $25 million. DHHS assumed that if 5 percent turned up with a criminal record (50,000) and 2 percent of those were child sexual abusers (1,000), then the cost of finding these 1,000 potential sexual abusers amounted to $250,000 per abuser. This lofty price tag led Finkelhor and Williams (1988) to conclude that police records checks "are expensive and inefficient prevention techniques, identifying only a small fraction of potential abusers at prohibitive cost."

The Fairfax County School system spent an estimated $140,000 in 1990 to fingerprint more than 4,000 job applicants ($35.00 per applicant.) Using an

estimated hit rate of 5 percent, 200 potentially abusive individuals would be screened out to the tune of $700.00 per offender. School officials feel that state and federal checks are worth the money and necessary since so many applicants are new residents coming from out-of-state (*Fairfax Journal*, January 8, 1990). Hawaii's Department of Education estimated that while state background checks are free, conducting FBI fingerprint checks on an estimated 6,000 new public school employees would run them around $138,000 a year, not including administrative costs. The state's education department employs approximately 30,000 full- and part-timers, a potential $690,000 expense (*Honolulu Advertiser*, November 13, 1991).

In examining the issue of cost in greater detail, it is apparent that all of the information on cost has not yet been fully considered. For example, using the DHHS scenario, another way to look at the total cost of criminal history record checks is to consider the cost per perpetrator identified. If we use very liberal estimates and assume that the initial 50,000 who are identified have some type of criminal record (not solely a sex offense) that makes them unsuitable for the position, then the cost per offender drops dramatically to $500.00. Still another option might be to ascertain how much criminal record checks cost from a "per child saved from abuse" standpoint. If we speculate that each offender may abuse from 7 to 100 children (please refer to page 11), then the cost for each child saved from abuse from the cohort of offenders identified becomes just over $70.00 or as little as $5.00. But this assumes that preventing one offender from being hired for that one job will stop him or her from abusing the children in other settings.

To carry this thought further, one would have to consider how costs will accumulate over time; i.e., this cost estimate is really a "per child saved from abuse" by only one offender in a particular employment/volunteer setting. A child may be exposed to a number of people at any given point in time (e.g., teacher, coach, priest, doctor and others), and during childhood the number of adult-child contacts is virtually endless. To calculate true costs, one would have ω add up the expense of conducting criminal history record checks on *all* of the individuals that may present some risk to a child (e.g., school administrators, teachers and support staff, day care providers and their adult household family members who may help out, community recreational center employees and volunteers, youth development workers, health care direct service and support staff).

Table 4 provides a financial profile of the estimated costs associated with conducting criminal record checks on public school employees in 12 states. These examples, while only representing one of the many settings in which adults come into contact with children and youth, are offered in part because schools are a place where exposure is greatest. In addition, estimates on the number of public school employees (instructional and non-instructional

staff) are readily available, whereas a breakdown on the number of recreational and youth development workers, as well as other professions, is not. Readers should note that "cost per child saved" (as portrayed in the chart) only takes into account the cost of saving a child from abuse by one public school employee while that child is in the school setting. In addition, the cost of federal and state checks includes the FBI's $23.00 charge and a given state's own fee, but does not include other administrative costs which may be prohibitively expensive for some agencies. (Administrative costs are not included because no reliable estimates were gleaned from the literature.)

TABLE 4: COST OF CRIMINAL RECORD CHECKS FOR PUBLIC SCHOOL EMPLOYEES*

Case Examples of 12 States

STATE	# Employees Screened	Cost per federal & state check	Total Cost for Checks	# Indivs with Crim Record**	Cost per Offender	Cost per Child Saved+	Cost per Child Saved++
ARKANSAS	49,750	$23.00	$1,144,250	2,488	$460.00	$65.71	$4.60
KENTUCKY	72,240	$27.00	$1,950,480	3,612	$540.00	$77.14	$5.40
IOWA	58,400	$29.00	$1,693,600	2,920	$580.00	$82.86	$5.80
MINNESOTA	77,700	$31.00	$2,408,700	3,885	$620.00	$88.57	$6.20
FLORIDA	216,850	$33.00	$7,156,050	10,843	$660.00	$94.29	$6.60
VIRGINIA	129,820	$35.00	$4,543,700	6,491	$700.00	$100.00	$7.00
ILLINOIS	192,000	$37.00	$7,104,000	9,600	$740.00	$105.71	$7.40
TEXAS	332,220	$38.00	$12,624,360	16,611	$760.00	$108.57	$7.60
MARYLAND	78,950	$41.00	$3,236,950	3,948	$820.00	$117.14	$8.20
ALASKA	12,920	$43.00	$555,560	646	$860.00	$122.86	$8.60
TENNESSEE	87,230	$46.00	$4,012,580	4,362	$920.00	$131.43	$9.20
CALIFORNIA	428,380	$50.00	$21,419,000	21,419	$1,000.00	$142.86	$10.00
TOTALS:	1,736,460	N/A	$67,849,230	86,823	$8,660.00	$1,237.14	$86.60

NOTE: "Cost per child saved" only takes into account the cost of saving a child from abuse by one public school employee while that child is in the school setting.

* Full-time equivalent public school employees in 1990, including administrators, school staff and support services staff (National Center for Education Statistics, 1992).

** Using 5 percent "hit" rate.

\+ Assuming 7 student victims per public school employee offender.

\+\+ Assuming 100 student victims per public school employee offender.

Contentions that Criminal Record Checks are Unfair and an Invasion of Privacy

Criticism of criminal background checks, however, extends beyond the financial, administrative and effectiveness arenas to encompass issues of privacy and fairness. While some individuals hold that people should be given a second chance and an opportunity to start anew, others argue that the community has the right to protect itself; not only must individuals be held accountable for their behavior, but organizations must be held responsible for their employees' character.

Civil and constitutional rights advocates reject the idea that child- and youth-serving organizations should have increased access to individuals' criminal history records. They object, in part, on the grounds that employers do not know how to properly decipher and use criminal history information. This alleged inability to translate criminal records, advocates argue, paves the way for employer misinterpretation and discrimination. Secondly, opponents of criminal background checks argue that increased access will have an adverse effect on the poor, blacks and other minorities because such groups account for a disproportionate percentage of criminal offenders. Testimony before the House Judiciary Committee indicated that blacks are arrested four times more frequently than whites, even though only half of those arrests ever end in conviction. Additional testimony revealed that one-third of the FBI's criminal history files are on blacks and the percentage of blacks with arrest records ranges from 30 percent nationwide to over 50 percent in certain cities such as Philadelphia (Subcommittee on Civil and Constitutional Rights, October 1987).

In sum, it has been argued that police checks are not effective as a screening method because they are incomplete and do not provide enough detail for certain offenses; contain no records on juvenile offenders unless tried as an adult; are expensive and time consuming; have an adverse effect on minorities; are invasive and discourage the recruitment of quality employees/volunteers; and can increase an agency's liability if the agency fails to use the police check capability. These arguments need to be weighed and, within the privacy and due process parameters set by the Constitution, balanced against the pivotal consequences of having repeat offenders slip through the cracks and harm more children. The following section reviews the legal literature discussing how federal and state law have resolved some of these issues.

G. Legal Issues Arising from the Use of Criminal History Record Checks

The literature reveals that using criminal background checks to screen out unsuitable employees and volunteers has raised a number of legal issues. Specifically, the literature discusses: (1) whether the disclosure of criminal history records, including arrest and/or conviction information, implicates constitutional privacy or due process interests; (2) whether the disclosure or use of criminal records in screening persons who work with children violates statutory or tort-based privacy considerations; (3) whether the use of criminal records as a screening tool violates principles of fair employment practices, including those discrimination prohibitions set forth in Title VII of the 1964 Civil Rights Act; (4) whether an employer can be held liable for harm caused by an employee or volunteer with a criminal record; and (5) whether a state agency or employer can be held liable for harm caused by the use of inaccurate criminal history information.[13]

Constitutional Issues: Privacy and Due Process Considerations

The constitutional challenges regarding disclosure of criminal background information have focused on privacy interests and due process of the law. The 1976 Supreme Court case of *Paul v. Davis*, 424 U.S. 693 (1976) and its progeny, however, effectively eliminated most challenges based on federal constitutional privacy interests.[14] In *Paul*, police officials circulated a flier to local merchants, entitled "ACTIVE SHOPLIFTERS," which included the plaintiff's picture. The plaintiff had been arrested for shoplifting some 18 months earlier and never convicted, although the charges were still pending. As Davidson and his colleagues (1991) point out, the *Paul* court held that this action was not a violation of the plaintiff's constitutional right to privacy and noted that the privacy claim was "far afield" from the line of past Supreme Court privacy decisions involving "marriage, procreation, contraception, family relationships and child rearing and education." And several other authors have suggested that the "public record" nature of the arrest information in *Paul* was a critical factor limiting the application of any constitutional right to privacy.[15]

Subsequent lower court decisions have generally given short shrift to constitutional challenges to disclosure of criminal convictions and pending criminal charges based on the right of privacy. Some cases, however, suggest that privacy considerations may still be applicable with respect to acquittals, records of old arrests no longer pending, records of arrests made without probable cause, or records otherwise defective (BJS, November 1988a). Thus, at least with respect to disclosure of conviction and current, pending arrest information, the legal literature indicates that a federal constitutional right to privacy is not implicated. Protection of privacy interests has largely been

left to those state constitutions that provide a right to privacy, the common law action of invasion of privacy, and statutory limitations on criminal records based on public policy concerns for privacy.[16]

Several state constitutions, including California, expressly provide a right to privacy. The extent to which the state constitutions explicitly or implicitly protect against the disclosure of criminal history information in screening persons who work with children is unclear from the literature reviewed. In Florida, persons named in public records (such as criminal arrest and conviction records) have *not* been found to have a state right to privacy that is violated by the release of public records (Rivas, 1992).

Due process considerations are at issue in the use of criminal background checks because a person's interest in earning a living has been included in the concept of "liberty" under the Constitution's due process clause. However, Davidson et al. (1991) note that in *DeVeau v. Braisted*, 363 U.S. 144 (1960), the court held that employment and licensing restrictions do not violate the due process clause if they are "reasonable means for achieving a legitimate state aim." Since protecting children from abuse outside the home has been found to be a legitimate state aim,[17] the inquiry is whether the use of criminal checks is a reasonable means to protect children. The legal literature analyzing this issue is limited. It is clear, however, that reasonableness under the due process clause requires the inclusion of certain procedural protections. The literature describes some of the procedural safeguards that have been proposed in utilizing criminal record checks.

In a memorandum regarding the DeConcini-Specter Amendment, Sen. Arlen Specter recommended that individuals disqualified from employment as a result of their criminal history be notified of the reasons for the disqualification (including information on the procedures to challenge or correct inaccurate information) and given an opportunity to be heard before the state agency (Beaty and Woolley, 1985).

The SEARCH Group's 1988 report *Standards for the Security and Privacy of Criminal History Record Information*, which sets forth national standards for handling criminal justice information, is also instructive. Standard 13.5 recommends that most criminal history record information be publicly available, except for certain nonconviction information, (including arrests over one year with no charges actively pending, *nolle prosses*, and acquittals and dismissals), which is to be disclosed for "private noncriminal justice purposes as authorized by state statute." Further, this nonconviction information is to be available under a written agreement ensuring that "the information is used only for the purpose for which it was disseminated, is not redisseminated, and is maintained in a manner to assure the security of the information and the protection of the privacy interests of the record subjects."

Statutory and Common Law Privacy Claims

Public policy concerns with privacy (and due process) form the basis for statutory provisions governing the maintenance and dissemination of criminal record information. A number of publications by the Bureau of Justice Statistics and the SEARCH Group, Inc. discuss the statutory and regulatory provisions governing criminal records.[18] These provisions include limitations on access to criminal record information. As previously noted, under federal law a private entity seeking access to FBI records for employment purposes must be authorized to do so by state law and through a state intermediary. In addition, the Privacy Act of 1974, 5 U.S.C. §552a, provides a number of safeguards designed to protect privacy interests. The Act includes procedures for individuals to access and amend federal agency files with information about themselves and permits certain civil suits if the federal agency does not correct inaccurate data (Firehock, 1992). However, the Act's authorization for law enforcement agencies to exempt themselves from certain duties under the Act has limited its reach. The exemption for law enforcement-related records has been interpreted to include recompilations of such records for non-law enforcement purposes (ibid). Thus, the Act may not be applicable to criminal records used for the screening of persons working with children.

The common law tort action, invasion of privacy, may also be the basis for liability resulting from the use of inaccurate data. As initially analyzed by William Prosser (1960), invasion of privacy includes four distinct types of torts, including "public disclosure of private facts." For the most part, the cases involving the release of criminal records have focused on this type of tort. Drawing on the analysis in *Paul v. Davis* regarding the constitutionally-based right of privacy, some courts have found that the tort of invasion of privacy does not prevent the disclosure of criminal justice records because arrests and convictions are public facts. Other courts have balanced the individual's privacy interests against the public's interest in having the records disclosed (SEARCH Group, 1984; Turkington, 1990).

Employment Law Issues

Employers in a number of business areas are increasingly using detailed computer databases to obtain information about prospective employees' criminal, credit or workers compensation histories. Some individuals have claimed that the practice of using criminal history information is discriminatory under Title VII of the Civil Rights Act of 1964, and have challenged hiring and firing decisions based on criminal records because they have a disproportionate impact on the employment opportunities of minorities. In certain employment contexts not involving children, these challenges have been successful. (Frank, 1992; Frierson, 1988a) However, if an employer

can show that criminal background checks are a "business necessity," checking arrest records or other criminal information will not be considered unlawful discrimination within the meaning of Title VII. In deciding whether a practice is a business necessity, courts make a determination as to whether the practice is "related to job performance" [Davidson et al., 1991 citing *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971)].

The literature to date does not specify whether any court has expressly ruled that the use of criminal information to screen people who work with children does not violate Title VII.[19] However, as the ABA Center on Children and the Law has noted, "[i]n light of the recent increase in out-of-home child abuse, child-serving organizations . . . are very likely to have what courts would consider a 'business necessity' to check arrest records of prospective and current employees" (Davidson et al., 1991). Others argue that only conviction information should be used, asserting that the use of arrests without convictions violates Title VII.[20]

Moreover, in deciding the effect of an existing conviction (or arrest, if such information is to be used), courts have determined that "any test used [to hire or retain employees] must measure the person for the job and not the person in the abstract." Thus, a criminal record generally may not absolutely bar employment, but may be a consideration in the decision to hire or retain an employee (Davidson et al., 1991). The practice of rejecting all those with criminal convictions was struck down in a case that did not involve care, service or treatment of children, with the court noting that such practices will not be upheld unless there is a specific business or statutory justification (Schreiber, 1980). Again, whether child-serving organizations have a business justification for rejecting an applicant simply based on a criminal record, is unclear from the legal literature reviewed.

The states also have equal employment opportunity statutes similar to the federal Title VII. Consequently, a prospective employee may challenge a hiring decision based on state rather than federal fair employment law (Murray, 1986). Further, in some states, requesting arrest information on a job application generally violates the state equal employment opportunity laws, although positions involving work with children may be excepted (Hahn, 1991).

Negligent Hiring and Negligent Supervision

Analysis of negligent hiring and negligent supervision historically stemmed from a "respondeat superior" theory under which acts falling outside the scope of employment do not subject an employer to liability. Since criminal acts tend to fall outside the scope of employment, employers

generally have not been held liable for child abuse perpetrated by their employees under a respondeat superior theory.

In recent years, however, challenges utilizing "negligent hire" or "negligent supervision" theories have met with some success. An employer customarily has a duty to use "reasonable care" in hiring and retaining employees who are competent and fit for their positions. In deciding whether the exercise of reasonable care in hiring may include reviewing a prospective hire's criminal background, a court will look at all the circumstances surrounding the hiring, including whether an employee is being hired for a sensitive occupation (Davidson et al., 1991).

The legal literature does not indicate whether the courts have expressly decided whether the sensitive nature of work conducted by child care and youth-serving organizations requires criminal record checks of employees. Liability is often predicated on the broader finding that an employer hired a person without an adequate background investigation which would have indicated that the plaintiff child was at risk (Bates, July 1990). Davidson and colleagues (1991) discuss *Infant C. v. Boy Scouts of America*, 391 S.E. 2d 322 (Va. 1990), a case in which the local Boy Scouts branch was found liable when a volunteer scoutmaster with a criminal record for sexually assaulting scouts in another state allegedly molested the child plaintiff. The court dismissed the claims against the national Boy Scouts organization based on a finding that the national organization did not participate in selecting or retaining the scoutmaster.

Under a "negligent supervision" theory, an employer may be liable for harm that could have been prevented by proper supervision of the employee or volunteer. Fossey (1986) refers to one case, *Collins v. School Board of Broward County*, 471 So. 2d 560 (Fla. Ct. App. 1985), in which the court held that a school district could be liable for a sexual assault on a student in an improperly supervised shop class. Although that particular case involved a student assaulting a student, the court's reasoning -- that the assault could have been prevented by proper supervision -- is equally applicable to employee or volunteer assaults. However, the fact that an abusive act takes place while a child is in an employer's care, does not necessarily result in liability. In *Peck v. Siau*, 827 P.2d 1108 (Wash. Ct. App. 1992), a high school librarian and a student had sexual contact and the school district was sued based on negligent hiring and supervision. The court did not find the school district liable, noting the absence of actual or imputed knowledge that the librarian would endanger students. And the teacher to whom allegations of the librarian's misconduct were made was also not found liable since the teacher had no supervisory responsibilities (*ABA Juvenile & Child Welfare Law Reporter*, 1992, 11:84).

Lawsuits have also been brought in federal court by persons seeking damages against state officials for harms to children under a variety of circumstances (Guggenheim, 1991[21]). The Civil Rights Act, 42 U.S.C. section 1983 permits suits against officials acting under color of state law who have deprived persons of federal rights. The circumstances under which section 1983 can successfully be used to find liability for inadequate screening in the hiring or supervision of an abusive employee or volunteer is unclear from the literature. In *Daniels v. Williams*, 474 U.S. 327 (1986), and *Davidson v. Cannon*, 474 U.S. 344 (1986), the Supreme Court held that negligence cannot be the basis for liability under the Civil Rights Act. However, since those cases involved single, random instances of negligence, to the extent that the failure to adequately provide supervision constitutes "deliberate indifference" rather than mere negligence, there may be grounds for liability (Soler et al., 1991).

The Use of Inaccurate Data: Defamation and Negligence Claims

The extent to which the state or private employers can be held liable for the use of inaccurate data rests on the application of several tort law theories, primarily defamation and negligence. An April 1984 report by the SEARCH Group, *Liability for Mishandling Criminal Records*, contains a useful discussion of the application of these theories to the use of inaccurate criminal records, particularly with respect to the liability of state agencies.[22] Defamation, which includes the common law actions of libel (written or printed statements) and slander (oral statements), can arise when inaccurate criminal records are disseminated without having made reasonable efforts to ensure accuracy. Generally, plaintiffs suing criminal justice agency officials on this theory will be hindered by the necessity of proving that the official releasing the information was motivated by ill will or lacked reasonable grounds for believing that the information was accurate.

A negligence theory is less onerous for plaintiffs. Liability can result from the "dissemination of erroneous information, failing to exercise due care in employing and supervising record personnel or possibly from merely maintaining inaccurate records. Numerous courts have said that criminal justice agencies do have a duty to exercise reasonable care to insure that their records are complete and accurate and to prevent dissemination of inaccurate records" (SEARCH Group, April 1984).

H. Unanswered Questions, Unresolved Issues

While deliberating the advantages and disadvantages of criminal record checks, earnest consideration must be given to some principal issues which are still in dispute. Resolving the issues outlined below is paramount to conducting criminal record checks in a productive and equitable manner:

- What information should be kept in criminal record repositories and how much of it should be disseminated?
- What categories and types of offenses are to be used in deciding employment or volunteer placement decisions; which of these will be mandatory disqualifying criteria, which will be discretionary?
- Who within the organization receives the information and is responsible for the final decision?[23]
- How and when is the applicant notified and given an opportunity to refute the record?
- What is the applicant's employment/volunteer status pending the outcome of the check?
- What provisions are made for identifying and verifying the person to receive the information and for ensuring that the information remains confidential?
- What types of employees and volunteers should be subject to screening? And how often; at initial hire/placement only or periodically?
- Given the differences in state laws authorizing or permitting criminal record checks, is there a standard protocol than can be followed?
- Who will pay for the costs associated with criminal background checks?
- What is the outcome of an applicant's refusal to submit to background screening, including a criminal record check and/or an organization's noncompliance with background screening requirements?
- What is the applicant's hiring or placement status pending any challenge to the accuracy of the criminal history information received?

Once these fundamental questions are dealt with, there are additional considerations regarding the actual review of criminal history information once an organization has obtained the applicant's record:

- ✓ Nature, severity, number and consequences of incidents disclosed.
- ✓ Age of individual at time of incident.
- ✓ Amount of time that has passed since event occurred.

- ✓ Circumstances surrounding each matter, including contributing societal or environmental conditions.
- ✓ Relationship between the incident and the type of employment or service that applicant will provide.
- ✓ Applicant's employment or voluntary history before and after the matter.
- ✓ Applicant efforts and success at rehabilitation.
- ✓ Likelihood that the matter would prevent the applicant from performing his/her responsibilities in a manner consistent with the safety and welfare of the children served by the agency.
- ✓ Circumstances and/or factors indicating that the crime is likely to be repeated.

VI. OTHER SCREENING MECHANISMS

Legislators and the general public are strongly cautioned against presuming that mandated criminal record checks are the end-all-be-all answer to fighting child abuse. If this misbelief takes root, support for other equally or more important measures may fail. The overriding sentiment is that criminal record checks are only a small part of an overall solution and unless they are done in conjunction with other screening measures, the money might be better spent on alternative prevention strategies.[24]

By relying on the use of criminal records, organizations may overlook other questionable behaviors -- including substance abuse, mental illness, emotional problems, sexual difficulties, poor judgment and insensitivity to and punitiveness towards children -- that may indicate an individual's unsuitability to work with or around children. Finkelhor and Williams (1988) found that half of all child sexual abuse perpetrators had some prior social problem, such as substance abuse or a psychiatric malady.

There are a multitude of other screening methods that child- and youth-serving organizations can employ, ranging from standard interviewing and reference checking to more complex and controversial procedures such as screening against child abuse and sex offender registries, psychological testing, drug testing, and home visits.

A. Screening Against State Central Child Abuse Registries

State central child abuse registries have become more popular in recent years. These registries essentially consist of information from child abuse and neglect reports. Some of the same criticisms, doubts and legal issues that plague criminal history record checks have been raised with screening potential employees and volunteers against state child abuse registries. Similar to the plight of criminal justice information systems, state child abuse registries were not developed for employment and licensing screening purposes. Instead, child abuse registries were developed to help investigate and track child protection cases and improve the provision of child welfare services; the focus was almost exclusively on intrafamilial cases with the goal of family preservation/reunification when in the best interests of the child.

The use of the child abuse registry as a screening device for child care and youth-service workers grew out of the same helplessness and frustration that induced organizations to access applicants' criminal records. However, unlike criminal history records or sex offender registries, which are typically maintained by law enforcement authorities, state child abuse registry information is managed by the state social services agency responsible for child protective services. Moreover, unlike conviction information, which has

passed the standard of proof beyond a reasonable doubt, child abuse registry information has not been subject to such a test, compounding the problems of inaccurate and incomplete data that beset many state child abuse registries.

A report from the California Children's Council denounced the growing use of its state child abuse registry for screening purposes, stating that "As a result of this rush to legislate, . . . not much attention has been focused on the use or misuse or the screening and recordkeeping processes. . . ." The report estimated that 65 percent of all child abuse allegations must be dismissed after an investigation (for a variety of reasons) and the overwhelming number of false reports makes registry accuracy "incomprehensible" (Sale et al., 1988). Due to the haphazard nature in which screening against child abuse registries originated, and the lack of uniformity in state statutes requiring such screening, there is a need for well-defined criteria and procedural safeguards to ensure proper maintenance and use of registry information.[25] Cohen (1985b) outlined some additional misgivings about the growing use of state child abuse registries for screening purposes:

- Many child abuse registries are indexed by child subject, not alleged perpetrator;
- Definitions of *reportable* child abuse vary across states and classifications and terms are not uniform; and
- Registry classifications are generally too broad and all-encompassing to be used appropriately for screening.

Use of State Child Abuse Registries for Screening Purposes

Several studies document the extent to which screening potential child care and youth-service workers against state child abuse registries occurs, although it appears to be predominantly child care workers who are subject to this practice. According to Hayes and her colleagues (1990), approximately 38 percent of the states conduct child abuse registry checks for family day care staff; about one-third do child abuse registry checks on center care staff; and one-third conduct child abuse registry checks for both family and center care providers.

The National Center for State Courts (1988) indicated that 68 percent of responding states use the central child abuse registry to screen applicants for day care, foster care and adoption; over half (56 percent) use the registry to track known abusers between jurisdictions (47). While screening in some states is limited to adoption, foster care and day care employees, others screen babysitters, camp counselors, child protective services (CPS) social workers, and volunteers who work with children. Figures D and E below represent a breakdown of child abuse registry screening activities for 45 states.

Figure D: SCREENING AGAINST STATE CHILD ABUSE REGISTRIES
Breakdown of Activities of 45 States

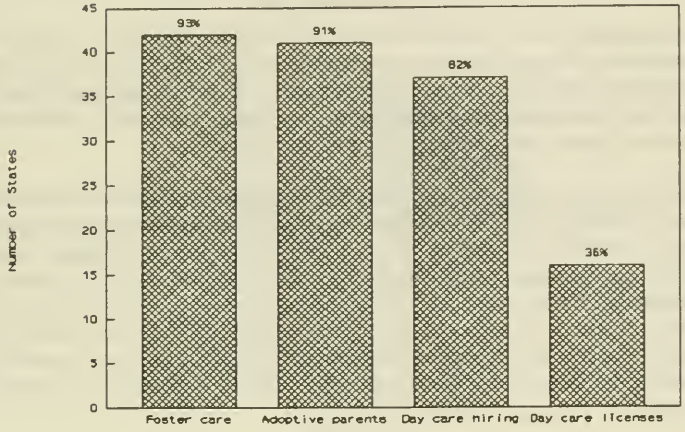
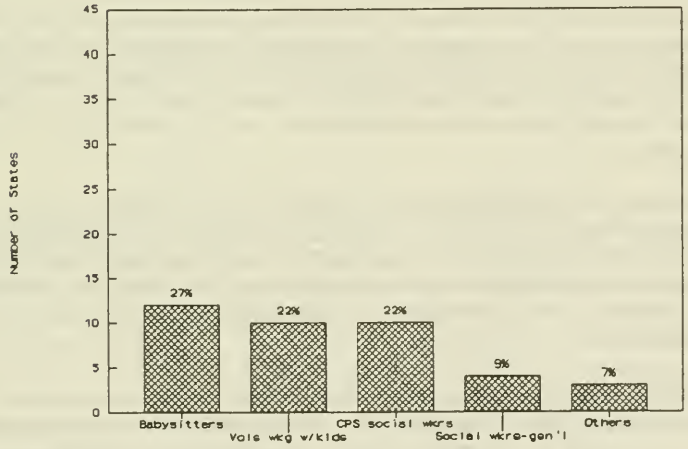


Figure E: SCREENING AGAINST STATE CHILD ABUSE REGISTRIES
Breakdown of Activities of 45 States



Source: National Center for State Courts, 1988

Presented below is a synopsis of several states' policies regarding the use of child abuse registries for screening (as conveyed by the National Center for State Courts, 1988), to help give readers an idea of the different state procedures:

- **Connecticut** screens adoption and foster care applicants against family and individual files only; there are no perpetrator files. For day care applicants, the registry will provide information on when the person appeared in the records; the reason for referral; and the suspected perpetrator. All household members over 16 are checked and must sign a release.

- **Florida** screens adoption applicants and employees/volunteers seeking work with children. In 1985, legislation was passed calling for closer screening of those providing out-of-home care or persons working with children in shelters, foster care programs, drug and mental health programs, day care and other residential or non-residential licensed or registered programs. Applicants must consent to a search and the registry provides the following information: search results, date of report, and procedure for inspecting court records if judicial determination of abuse was made. No fee is charged for confirmed reports.

- **New Hampshire** screens day care and foster care staff and prospective adoptive parents. In 1986, the registry received over 5,300 requests from the Bureau of Child Care Standards of Licensing, over 980 requests from District offices, about 520 from other licensing agencies, and over 60 each of out-of-state and adoption searches. Disclosure is limited to designated District Office Supervisors, Bureau Administrators and other designated State Office personnel.

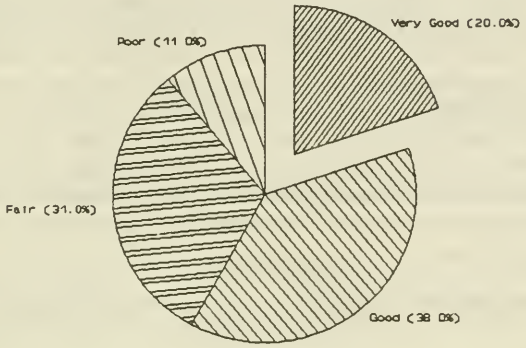
- **Pennsylvania** requires child care services employees to certify whether they have or have not been named as a perpetrator in a founded report; applicants cannot be hired if named in a founded report in the last 5 years. In 1986, Pennsylvania processed close to 46,000 requests, about 97.5 percent of which were potential child care services employees and 2.5 percent seeking voluntary certification.

- **Utah** screens prospective foster care providers, adoptive parents, and unlicensed day care providers. Department of Social Services employees are exempt from screening. "The perception of registry personnel is that 'hits' are important when they occur but are relatively rare." The state gets about 213 calls per month from other states requesting information on suspected perpetrators.

Though individual states have a significant amount of autonomy in governing how their child abuse registries operate, not all states are satisfied with how the registry is currently managed. Figure F on the following page displays how 45 responding states judged their own child abuse registries. Only one-fifth of the states (9) reported an overall self-evaluation of "very

good" for their registry; over one-third (17) classified their registry as "good"; 14 as "fair"; and 5 as "poor."

Figure F: SELF EVALUATION OF CENTRAL CHILD ABUSE REGISTRY
Responses of 45 States



Source: National Center for State Courts, 1988

Likelihood of Identifying Potential Offenders via State Child Abuse Registries

Given the slight chance that a potentially abusive individual will have a criminal record on file in either a state or national criminal history repository, child- and youth-serving organizations may resort to screening against a state's central child abuse registry for better odds. Unfortunately, there is evidence that screening via child abuse registry checks may be just as ineffective as criminal record checks in revealing potentially abusive child care and youth-service workers.

In New York State, for example, Governor Mario Cuomo recently sought to rescind the state's 1984 law requiring screening of prospective child care workers against the state child abuse registry to save $1 million. Such action was prompted by findings that the screening process has proved "inefficient and ineffective," and provided minimal return for the money. According to the State Social Services Department, less than 1 percent of the 103,831 people screened in fiscal year 1990 had been accused of child abuse and/or neglect (*The New York Times*, March 12, 1993). As indicated in the additional examples below, the literature reveals that the identification or "hit" rate using child abuse registries ranges from less than 1 percent to only about 2 percent (DHHS, 1985; National Center for State Courts, 1988):

- Florida estimates that out of about 200,000 requests, only 189 result in a hit (.09 percent).

- Of the close to 46,000 requests Pennsylvania processed in 1986, only 146 (.3 percent) had a record in a founded or indicated report; 69 percent for physical abuse; 16 percent for sexual abuse; 14 percent for neglect; and 2 percent for emotional abuse.

- Of the 14,000 - 15,000 searches a year conducted by Virginia for persons providing child care services, about 2 of every 500 (.4 percent) result in a hit.

- Screening of 366 applicants in New Hampshire yielded 167 possible matches, of which only 9 (about 2 percent) were actual hits.

- Connecticut estimates that 20 to 25 percent of the names checked are found in the database, however it is not known how many of these are actual perpetrators since the registry lists non-perpetrators as well.

- Since Illinois began screening foster home and day care center staff in 1982, 650 matches have been identified; since screening of staff in licensed facilities began in 1986, 228 hits have resulted -- the total number screened is not indicated.

As an alternative to screening against state child abuse registries, Cohen (1985b) suggests that organizations consider (1) requiring applicants to sign a declaration under penalty of perjury that they have not committed (or been convicted of) specified crimes; (2) disapproving persons who as parents/guardians have had their parental rights terminated or whose children have been deemed dependents of the state; (3) mandating checks of any previous denials, revocations or refusals to renew applicable licenses; (4) verifying an applicant's educational credentials and employment history; (5) relying on character/ employment references, not friends or relatives; and (6) instituting a probationary hiring period.

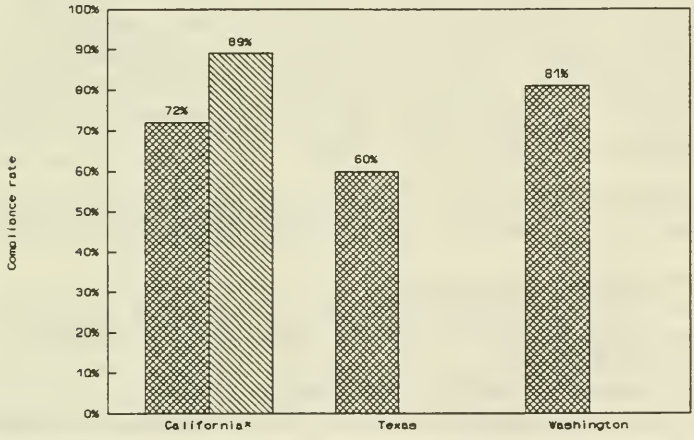
B. Screening Against State Sex Offender Registries

Maintaining a registry of convicted sex offenders, particularly child sex offenders, against which child care and youth-service workers can be screened is yet another protective option that many states have adopted or are exploring. Proponents of sex offender registries maintain that because sex offenders pose a high risk of reoffending after release from custody, their mobility must be monitored. Supporters of mandatory registration further argue that ensuring the public's safety takes precedence over the privacy rights of a convicted sex offender. Although Congress has considered legislation to encourage states to establish a sex offender registration process and central location for information collection, no such legislation has passed. Less than half of the states (21) have registration requirements for sex offenders; however, in 1987,

only 8 states had such a requirement. This inclination for states to track sex offenders is still on the rise; at least 12 states have introduced or drafted legislation addressing this issue.[26]

For those states that have implemented sex offender registries, problems seem evident, particularly when it comes to enforcing required registration. For example, as shown in Figure G, Texas has more than 3,000 sex offenders on parole, but only about 1,800 offenders (60 percent) are registered (Office of Attorney General, personal correspondence, 1993). California estimates its compliance rate to be from 72 to 89 percent, while Washington State revealed a compliance rate of 81 percent as of November 1992, up from 76 percent and 57 percent in November 1991 and 1990 respectively (Lewis, 1988; Washington State Institute for Public Policy, 1992). More often than not, the burden of registration falls upon the individual offender, not the institution from which he/she was released or the legal entity which rendered the offender guilty of a sex crime. And while penalties may be enacted for failure to register, the ability to enforce compliance is lacking.

Figure G: COMPLIANCE WITH SEX OFFENDER REGISTRATION
Selected States



* California reported 72% and 89% for two different groups released from prison in 1981.
Sources: Lewis, 1988; Office of Attorney General, Texas, personal correspondence, March 1993; Washington State Institute for Public Policy, 1992

States also do not agree on who should be required to register -- adult and juvenile offenders, first or "habitual" (i.e., repeat) offenders -- and for how long offender information should be kept on record. For example,

Arizona and California require lifetime registration of sex offenders, while New Hampshire and Washington State only require lifetime registration of some offenders and 10- or 15-year registration for others. Most states' registration requirements range from 10 to 20 years, but many will lessen the term if the court declares the offender "rehabilitated."

California and Washington are two states requiring juveniles to register, although California rescinds the requirement once the offender reaches age 25. Similarly, Texas registers a juvenile if he/she is committed to the Texas Youth Commission, but removes the name once the individual turns 21. Given the high incidence of abuse by juveniles and the recidivistic nature of child abuse, lifetime registration of both adults and juveniles may be warranted. The National Center for Missing and Exploited Children (1992), however, recommends in its model state legislation that only adult sex offenders be registered.

As with criminal history information systems and state child abuse central registries, there are many issues to untangle. In fact, Tennessee's General Assembly suspended implementation of the state's sex offender registry to screen child care providers until July 1993 to enable further review. A 1988 report on the effectiveness of California's sex offender registration requirements identified several major problem areas: (1) lack of time and manpower at the local agency level, (2) lack of a statewide automated sex registration system and up-to-date information, (3) lack of knowledge or cooperation by the offender to provide necessary registration information, (4) lack of staff training and familiarity with the registration system, (5) lack of punishment for sex registration violators, and (6) lack of information sharing among criminal justice agencies (Lewis, 1988).

Primary recommendations outlined in the National Center for Missing and Exploited Children's (NCMEC) proposed model state legislation include:

- Require lifetime registration.
- Require registration for both felony and misdemeanor convictions for relevant crimes.
- Require sex offenders to appear in person to register.
- Require regular verification of an offender's address, at least annually.
- Require registration within 10 days of assuming a new residence.
- Establish penalties for failure to comply with registration requirements.
- Allow information to be accessed only by law enforcement or authorized persons.
- Require local law enforcement to relay information to state criminal history repositories.

The last two NCMEC recommendations regarding access and availability of information are particularly important and warrant elaboration. Overwhelmingly, the states that have established sex offender registries limit their use to law enforcement purposes and do not allow other organizations or individuals to request the information for employment or licensing purposes. Two notable exceptions are (1) Illinois, which allows the Department of Children and Family Services access for background investigations, and (2) Oregon, which allows the Department of Human Resources access and also notifies the Teacher Standards and Practices Commission if the offender is a teacher or administrator.

C. National Practitioner Data Bank

The National Practitioner Data Bank, which is a national system enabling hospital and other health care entities to check on the status of a physician's license and whether a physician is or has been the subject of disciplinary actions, may be a useful model in developing a national background check system for persons working with children.

In an effort to crack down on the ability of incompetent or unprofessional physicians to flee their current locale and set up new practices in different hospitals or states, Congress passed the "Health Care Quality Improvement Act of 1986," Public Law 99-660. Title IV, Section 402 of this law ("Encouraging Good Faith Professional Review Activities") requires the reporting of information to a central source when a physician's license is revoked or suspended, or if the physician is censured, reprimanded or placed on probation. Congress' goal was to develop a comprehensive national reporting system to follow unfit doctors from place to place. Congress claimed that the establishment of such a data bank was necessary since state disciplinary review boards and existing peer review systems failed to adequately identify incapable practitioners.

The Department of Health and Human Services' (DHHS) Bureau of Health Professions garnered responsibility for implementation of such a data system and effective January 1989, DHHS awarded Unisys Corporation a 5-year, $15.9 million contract to develop and operate the National Practitioner Data Bank. (According to the Legislative History of P.L. 99-660, the Congressional Budget Office estimated that if DHHS maintained the clearinghouse, costs to the federal government would run $30 million in the first fiscal year and $10 million in each fiscal year thereafter.)

Similar to legislative efforts calling for mandated criminal record checks of potential child care and youth-service workers, P.L. 99-660 stipulates that hospitals and health care entities must obtain information from the data bank prior to hiring a physician and once every two years for existing

medical staff. Those hospitals and other medical care facilities which fail to consult the data bank can find themselves liable if the physician is later sued for medical malpractice. Civil penalties of up to $10,000 were also instituted to help protect the confidentiality of information. It should be noted, however, that DHHS advises health care entities to use the data bank with discretion as it is "primarily a flagging system whose principal purpose is to facilitate a more comprehensive review of professional credentials. Data received. . . should be used in combination with other sources of data in making determinations on granting clinical privileges or in employment, affiliation, or licensure decisions" (DHHS, 1990b).

The legislative history leading to the enactment of this law describes a problem not unlike what happens in child care organizations that discover an abusive staff member: "[H]ospitals too often accept 'voluntary' resignations of incompetent doctors in return for the hospital's silence about the reasons for the resignations" (Legislative History to P.L. 99-660, 1986). To ensure that health care entities and physicians won't resort to "plea bargains," P.L. 99-660 also requires health care entities to report cases where they resolve not to conduct an investigation if a physician agrees to relinquish his/her clinical privileges.

Clearly, much of the rationale which led to the establishment of the National Practitioner Data Bank is relevant to the current predicament faced by child- and youth-serving organizations aspiring to weed out potentially abusive employees/volunteers who may infiltrate their agency. A closer look at the operation, maintenance and effectiveness of the data bank in ensuring quality health care would be valuable.

D. Teacher Identification Clearinghouse

The Teacher Identification Clearinghouse, operated by the National Association of State Directors of Teacher Education and Certification (NASDTEC), is a nationwide database of all teachers whose certification has been denied, revoked or suspended over the past 15 years. The clearinghouse was instituted about four years ago. primarily as a response to prevent child abuse in the schools. Donald Hair, NASDTEC's Executive Director, estimates that about 70 percent of teacher revocations in the clearinghouse are for child sexual abuse. He indicated that broadening the scope to include information on all school employees (e.g., bus drivers, custodians) would be even more beneficial. The clearinghouse currently does not disseminate information to outside organizations, mainly because of legal constraints, but Hair notes this is an area worth exploring (personal correspondence, February 5, 1993).

State membership to the Teacher Identification Clearinghouse is voluntary. Currently all states except Iowa (which is in the process of joining) have signed clearinghouse agreements; this is a noteworthy increase from just eight member states in 1988. The cost of joining the clearinghouse is included as part of NASDTEC's membership fees, and each month NASDTEC sends out a list of all new revocations to every state; a complete listing is provided quarterly. Because listings do not include specific charges associated with the revocation or denial, states are directed to contact their respective certification offices if they require more information. Hair estimates that it costs NASDTEC about $20,000 a year to maintain and operate the clearinghouse.

Both the National Practitioner Data Bank and the Teacher Identification Clearinghouse are two persuasive examples of how Congress and a national professional association, respectively, were able to establish fruitful central information systems to be used for employment and licensing screening purposes. Legislators and advocates embarking on further efforts to develop such an information system for child- and youth-serving organizations are sure to benefit from a closer examination of the operation, maintenance and costs of these two existing setups.

E. Application Forms and Personal Interviews

Developing a comprehensive written application and supplementing or clarifying information through a personal interview(s) can provide a tremendous amount of knowledge about a potential employee/volunteer and should be a first step in any selection or hiring process. Disqualifying information may be disclosed in these early stages, precluding the need to conduct more intensive and costly background screening. However, in today's competitive job market, there is growing suspicion about how forthright an applicant's answers will be either on an application form or in a personal interview. About 25 percent of resumes contain incorrect or exaggerated information, ranging from inaccuracies about identities and educations to falsifying reasons for leaving a job (Pankau, 1990). And in answer to the question "Does anybody really admit to criminal activity?" a 1987 study of 225,000 job applicants showed that over 75 percent made no admissions of wrongdoing; about 6 percent admitted involvement in theft allegations at prior employment; just over 4 percent admitted committing a felony; approximately 6 percent admitted committing minor criminal acts; and close to 5 percent admitted relatively frequent illegal drug use on company premises. These percentages are not to be construed as actual incidence rates (Sackett et al., 1989).

Keeping in mind that an individual may fabricate his/her competence, but being careful not to dismiss the importance of the application and ensuing interview, organizations should use these activities as a backdrop to judging a

potential employee or volunteer's overall character. The application form should be detailed enough to give more than a cursory overview of work and educational history. Unexplained gaps in employment, declining salary history, unusual lengths of military service, or obvious overqualifications should raise warning flags. The application also should include a specific question regarding convictions and any allegations of child or sexual abuse and indicate that false statements are grounds for immediate dismissal. Even if an applicant lies, such directness sends a message about the agency's position on child abuse. In addition, if contrary information is later discovered through other screening procedures, the organization (as previously stipulated) has the discretion to deny the applicant the position solely on the basis that he/she lied.

In their survey of public schools, Titus and DeFrances (1989) found that on the application forms, 21 percent of the schools ask about other names used by the applicant, 16 percent require fingerprints, 11 percent require signing a waiver to allow review of state/ local police and FBI files and **63 percent require none of these.** In determining an applicant's eligibility:

- ✓ 84% ask about reasons for leaving previous employment
- ✓ 46% ask about revocation or denial of teaching certificate
- ✓ 34% ask about convictions or guilty pleas
- ✓ 27% ask about prior arrests
- ✓ 15% ask about pending charges
- ✓ 7% ask about acquittals
- ✓ 78% ask what the specific charges were in cases where an applicant mentions a criminal charge
- ✓ 11% ask about none of these

Much of the literature indicates that the personal interview is by far one of the most important and useful screening devices in selecting staff. Organizations are advised to develop a standardized interview to assure consistency among applicants and help eliminate any subjectivity associated with using multiple interviewers. A team approach to interviewing and subsequent hiring decisions is also recommended, especially for larger organizations, to increase objectivity and attain different perspectives.

Interviewers should address issues such as an applicant's experiences with children; childhood experiences (especially history of abuse); child developmental issues; problem-solving scenarios and proper caregiver behavior; and perceptions of children and childhood behavior. The use of vignettes, hypothetical situations, other written exercises and role playing are all recommended.[27]

In addition, the Colorado Department of Social Services (1987) recommends having the applicant write a brief autobiography, inviting him/her to "share anything else you would like us to know about you." The department also points out that videotaping the interview, with the applicant's consent, saves time and provides a permanent record of exactly what transpired. Videotaping not only provides the agency with a standardized document that acts as a future safeguard, but may also deter child abusers from applying, knowing that any misleading or false information will be recorded on tape.

Screening Tool Used by Big Brothers/Big Sisters of Greater Lowell, MA

McCormack and Selvaggio (1989) developed an interview screening device specifically for the Big Brothers/Big Sisters of Greater Lowell (Massachusetts) to help identify sexual offenders who seek access to children through youth-oriented organizations. The authors' goal was to operationalize certain characteristics to measure the presence and degree of a given attribute. They caution, however, that the indicators are not intended to "prove" that the potential volunteer is a pedophile, but instead provide enough information to help alert personnel to potentially abusive applicants. McCormack and Selvaggio outline the following 10 personal characteristics which, if found together, should pique concern about potential volunteers:

1. Indicates a preference for a child of a specific age.
2. Indicates a preference for a child who has a history of abuse and neglect.
3. Has a history of being abused as a child.
4. Had little social contact as a teenager.
5. Experienced frequent moves.
6. Has been overly active in the community in the affairs of children.
7. Has friends who are much younger.
8. Refers to children as innocent or pure.
9. Has many hobbies and interests that are appealing to children.
10. Is undergoing his/her second or subsequent match with a child.

Inclusion of the last variable was based on Wolff's (1986) finding that almost twice as many reported incidents involving Big Brothers/Big Sisters' volunteers occurred in a second or subsequent match. In cases where adults are paired with children, volunteers often may terminate matches early on because the child is unresponsive or the two did not get along.

The 245-item screening tool is broken down into subsections on background information; relationships with children; family structure and environment; present life-style and relationships; and the match relationship.

Questions encompassing the above 10 indicators are interspersed in the appropriate sections. McCormack and Selvaggio affirm that using such a screening device serves to (1) protect the credibility of caseworker; (2) shield the community agency from liability; and (3) limit access of offenders into youth-oriented community agencies. The authors strongly recommend, however, that the instrument be used in conjunction with other precautionary screening procedures.

John Walker, Executive Director of Big Brothers/Big Sisters in Lowell, said the agency has been using the interview screening tool for about five years now. The whole set of questions takes about an hour and a half to complete and is divided into two parts, the second of which focuses more on sex-related issues and is broached only after the applicant has had time to become comfortable with the agency and interviewer. The interview screening tool is used in conjunction with other screening practices, including criminal background checks, reference checks, asking applicants to respond to hypothetical situations, and home visits. Applicants are notified of all steps in the volunteer selection process, which takes two to four months to complete. According to Walker, about 25 to 35 percent of applicants do not follow through, and about a quarter of all applicants are rejected outright for "one reason or another." In 1991, the agency screened close to 100 volunteers who made it past the initial selection criteria (personal correspondence, November 6, 1992).

F. Reference Checks

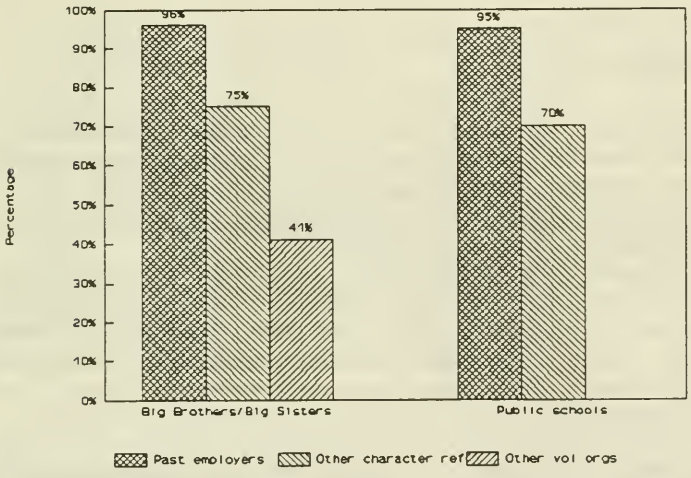
Many organizations verify or supplement their knowledge of an applicant by contacting a past employer. Although conferring with an applicant's past employer(s) seems like an obvious step in pre-employment screening, Lotitio and Bryant (1988) found that up to 75 percent of employers fail to check references before hiring an individual. Some organizations may shy away from reference checking because in today's business world, it can be a double-edged sword: on one side is the power of a former employee to sue for defamation; on the other, the power of a third party to sue an employer for negligent hiring.

An employer's responsibility to check into an applicant's background, however, is magnified when the position requires the applicant to come into contact with the public, especially unsupervised contact. Case in point: A Colorado state court awarded a plaintiff $210,000 in damages after a McDonald's worker, who had previously been convicted of sexually assaulting children, assaulted a 3-year-old boy. McDonald's did not know about the conviction, nor did it check all his references. The state agency that placed the worker shared the liability (Collyer and Eastus, 1991).

To avoid defamation and negligent hiring claims when checking or providing references, Lotitio and Bryant (1988) suggest the following: maintain a corporate policy of truthfulness and accuracy; document all pre-employment investigation; insure that communications concern work-related matters only; obtain a written release giving employee's consent to release information; have the applicant explain any gaps in employment history; centralize who provides reference information; and provide information on a need-to-know basis only. In addition, an employer's verbal or written assurance that employment (and other) references will be checked will help assist in deterring those who have a problematic employment history.

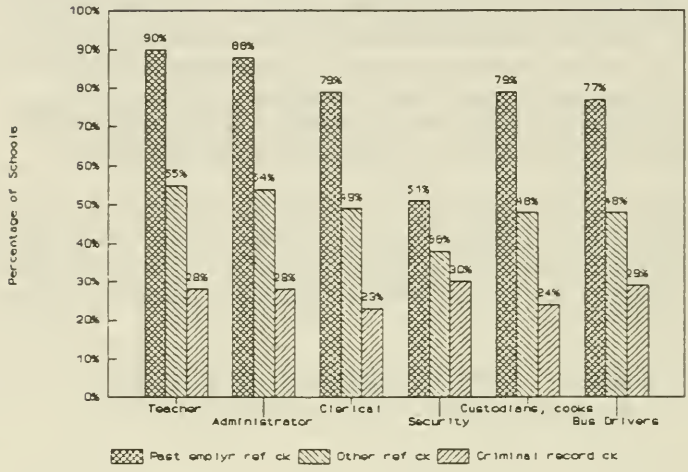
Figure H provides examples of reference checking practices followed by Big Brothers/Big Sisters and a sampling of public schools, while Figure I indicates that public schools are inclined to conduct reference checks, (both with prior employers and "other" character references), rather than criminal record checks.

Figure H: TYPES OF REFERENCES CHECKED
By Big Brothers/Big Sisters and Public Schools



Sources: Carrilio, 1987; Titus and DeFrances, 1989

Figure I: TYPE OF SCREENING BY PUBLIC SCHOOLS
By Employee Position



Source: Titus and DeFrances, 1989

G. PSYCHOLOGICAL TESTS

As previously discussed in Section II, the literature reveals several offender and situational characteristics believed, but not proven to be linked to abuse. Some child abuse professionals have taken this philosophy a step further to construct psychological tests that they hope will determine with appropriate scientific validity a causal relationship between personality/behavior traits and child abuse. The church, in light of sexual abuse scandals, has increasingly turned to the use of such psychological and personality tests for prospective pastors. *The Denver Post* (April 28, 1991) reported that "[m]ost ministers believe they're 'called by God,' but a growing number of churches and synagogues want a recommendation from a psychologist as well."

The power of psychological tests to identify employees/volunteers with a propensity for abuse, however, is debatable. After reviewing the literature on various psychological tests, Murphy and Peters (1992) concluded that "there is no research evidence to suggest that clinicians using all the tools available can profile sexual offenders with sufficient validity and reliability. . . ." Many psychological tests are general in nature and those tests that are child-abuse specific were originally developed to assess abusive *parents*, not child care and youth-service workers.

Some of the More Well-Known Psychological Tests

Probably the most recognized psychological test for assessing a parent's propensity for child abuse is Joel Milner's Child Abuse Potential Inventory (CAP). The CAP delves into six major areas: distress, rigidity, unhappiness, problems with child and self, problems with family, and problems from others. Those with high abuse scores are more likely to display a history of childhood abuse, low self-esteem, poor ego development, immaturity, moodiness, frustration, loneliness, self-centeredness and an aversion to responsibility (Anderson, 1988). Using the CAP, Atten and Milner (1987) also found that clear job expectations and overall job satisfaction were modestly related to the measure of child abuse potential (i.e., those content with their jobs are less likely to engage in abusive behavior).

Haddock and McQueen (1983) administered the CAP Inventory, the Minnesota Satisfaction Questionnaire (MSQ) and a General Information Form to 21 known abusers and 21 known non-abusers employed by out-of-home care institutions. Their sample accounted for four job categories: psychiatric technicians, supervising psychiatric technicians, teaching home parents, and hospital workers/janitors. In addition to Milner's CAP-I Abuse scale, the authors found the following combined variables to be significant:

- MSQ independence subscale, which measures an employee's satisfaction on the chance to work independently;
- MSQ advancement subscale, which measures hope of job advancement/promotion;
- MSQ achievement/accomplishment subscale;
- Employee's own number of children (two-thirds of non-abusers had less than 2 children, while 24 percent of abusers had 2 children and 35 percent had 3 or more);
- Childhood exposure to abuse and extreme discipline;
- Alcohol consumption; and
- Marital status/distress.

Jones and colleagues (1990) did studies involving the CAP, the Personnel Selection Inventory (PSI), and other tests to assess honesty, violence, substance abuse, emotional stability and safety. The authors identified four areas in which child abusers tend to have problems: (1) difficulty adjusting socially (may be antisocial, alienated, lonely or delinquent); (2) emotionally unstable (experience a variety of conflicting emotions such as frustration, anxiety, depression, stress, low self-esteem); (3) impulsive and unable to resist their wants; and (4) frequently conflict with authority figures. While the authors concluded that the PSI is an effective instrument for identifying potentially abusive employees, they caution that it is "not a panacea

and should be used in conjunction with other credible selection devices (e.g., interviews, reference checks, criminal background checks, job simulations, physical drug tests, and supplementary paper-and-pencil tests) and effective monitoring programs (e.g., home visits, interviews with children, parents and child care workers)."

The MMPI is another standardized psychological test that employers may consult. However, recent studies show that the MMPI may be an inappropriate tool since it cannot predict sexual abuse or provide a single profile that describes child molesters.[28] Organizations must be careful not to overestimate the usefulness of the MMPI; administered alone, as with other individual screening mechanisms, the MMPI cannot adequately predict abuse but may help provide one piece of the puzzle.

The Abel Screen

More recently, Dr. Gene Abel of the Behavioral Medicine Institute of Atlanta has developed a test he coined the Abel Screen to facilitate the identification of individuals with pedophiliac tendencies. The screen, which is a series of four tests whose scores reveal 20 separate kinds of sexual interests, is considered to be most effective in detecting those who are attracted to young boys. According to Abel, the screen is noninvasive, highly accurate, and can be administered in about 90 minutes in any setting (Archdiocese of Chicago, June 1992c). As of this writing, the research on which these conclusions are based is in preparation for publication. To date, the authors of this report have not identified any published research findings that elaborate on the work done with the Abel Screen.

Abel, himself, recognizes that the screen "will not cure the problem but it will be a response to the difficult issue of child molesters putting themselves in positions with access to children" (Archdiocese of Chicago, June 1992c). Further research is needed using various types of child- and youth-serving workers, not just known sex offenders undergoing treatment, to document the effectiveness of the Abel Screen.

Based on the literature reviewed, the appropriateness of psychological/personality testing to predict potentially abusive behavior remains unclear. However, if an organization is contemplating the use of Milner's CAP Inventory, the Abel Screen, the MMPI or some other similar test as a screening mechanism, several issues first need to be resolved. These include (1) identifying the most appropriate psychological test, **if any**, to administer; (2) training or hiring qualified staff to conduct and interpret the test; (3) presenting the test in a non-offensive, non-intrusive manner, especially with regard to volunteers; and (4) determining how to cover the costs

associated with psychological screening. Anderson (1988) raises the following additional considerations:

- Who would designate applicants as having "failed" a test?
- Who will safeguard the test scores and make sure they remain confidential?
- What child abuse potential data will be released to failing applicants and how will it be released?
- What can be done to diminish the stigma associated with a failing test score?
- Will applicants who fail a test be allowed to retake it? at what point?

H. Additional Pre-Employment Screening Options

For those organizations that want to exhaust background screening options, there are a few additional methods open to them. One of the more straightforward and affordable involves obtaining an applicant's motor vehicle report (MVR). The MVR is useful to confirm an applicant's name, social security number, birth date and other identifying information, and also serves as a cross-check to uncover false or misleading information or other states where the person has lived or worked. Better yet, most states will charge only a few dollars for this service (Long, 1992).

Another alternative, which may be especially useful for the voluntary organizations and foster care or adoptive parent applicants, is home visits or assessments. Carrilio (1987) found that 90 percent of Big Brother/Big Sister affiliates conducted home assessments of potential volunteers. Two additional, but somewhat controversial electives to be used in combination with other screening procedures include drug testing and requiring a one-year period of residency.

To exercise many of the available screening methods presented here may entail a substantial doling out of human resources and chipping away at valuable time; two precious commodities that most organizations are reluctant to squander. The mobility of today's society also presents special difficulties in conducting background investigations and may lead to a demand for more time and people to complete the screening than originally allotted. Those agencies with insufficient personnel or time to conduct thorough pre-employment screening, but which have ample discretionary funds, may want to look into using a private background investigative firm. Services provided by these firms vary but can include reference checks, criminal background checks, drug screening, psychological testing and polygraph tests. The advantages of using an outside source to conduct background screening include: quick turnaround, legal accuracy, thoroughness, and in-depth analysis. The downfall is that these services may be only local or regional in breadth and can be quite costly.

Clearly, screening against state child abuse and/or sex offender registries is not without problems, many of which are similar to the pitfalls of criminal record checks. In addition, the National Practitioner Data Bank and the Teacher Identification Clearinghouse are limited in their scope and accessibility. Given the complications associated with these various information systems, child- and youth-serving organizations may opt for other screening measures that rely less on outside systems and more on internal investigation.

I. Post-Hiring/Placement Procedures to be Used in Conjunction with Background Screening

Many authors urge that prevention of institutional abuse should not stop at the pre-employment screening of applicants, but continue by addressing on-the-job issues such as training and improved supervision and monitoring. Screening, coupled with appropriate personnel policies, will help protect children and boost staff productivity. Adequate day-to-day supervision of staff and a probationary period for new employees/volunteers, ranks high on the safeguard list.[29] In fact, Finkelhor and Williams (1988) found that almost half of the perpetrators had been employed at their day-care job for less than a year at the time the abuse occurred.

"The agency needs a clear and concise policy that sets the parameters for discipline and child management. An overall agency philosophy and tone or attitude must permeate throughout the ranks of the staff, and it must be effectively communicated" (California Association of Services for Children, 1987). On the advice of DHHS (1985), an organization's written policies should include: (1) a code of conduct for staff relating to their behavior with children; (2) policies on reporting suspected abuse; (3) policies on investigating staff or applicants concerning abuse; and (4) policies on hiring staff previously accused, indicted or found guilty of abuse. Copple (1990) also recommends creating linkages between various regulatory systems regarding staff qualifications and certification requirements to help unify the work force and extend training opportunities.

Ongoing personnel training should include coverage of facility's emergency plans and reminders on safety procedures; principles and practices of child care and the facility's philosophies; a review of administrative policies and procedures; and crisis management techniques. An additional line of defense recommended for child- and youth-serving organizations consists of awareness programs for children, parents and all employees and volunteers who work with or around children (*The News Chief*, September 28, 1984).

J. Summary Statement Regarding Screening Methods

Each of the screening procedures outlined in this section yields, for the most part, different information about an applicant's character. While criminal record and sex offender registry checks may provide specific criminal information such as felony convictions, screening against state central child abuse registries instead offers information gleaned from civil child protection investigations. In comparison, the more standard hiring practices (e.g., reference checks, application forms, personal interviews) provide bits and pieces of information that when culled together help an employer gauge an applicant's integrity and stability. Obviously all screening methods and other prevention strategies are not without cost implications for an organization. Because most organizations do not have the financial or human resources to employ **all** of these methods, a thorough assessment of the relative merits of each practice is essential.

VII. CONCLUSIONS AND RECOMMENDATIONS

A. Summary - What We Know to Date

There is no disputing that we -- legislators, policymakers, child advocates, service providers and other concerned parties -- have our work cut out for us in fighting out-of-home abuse perpetrated by child care and youth-service workers. The first step, determining the true scope of the problem, is not an easy task given (a) the multitude of settings in which child care and youth-service workers reside; (b) the millions of children who come into contact with these adults; and (c) the absence of uniform definitions or methods to identify physical and sexual child abuse.

There are no easy answers to preventing extrafamilial abuse. We know that people who abuse or neglect children in out-of-home settings are a diverse and complex population for which no single profile exists. And given the unpredictability of human behavior and the belief that there is not one but rather a series of factors leading up to an abusive incident, we must accept the impossibility of being 100 percent confident that all potentially abusive employees and volunteers have been screened out. This, however, does not mean that child- and youth-serving organizations are powerless; they can take advantage of the many available screening options, being careful not to rely on one exclusive mechanism in determining an applicant's suitability.

From the discussion of legislative and regulatory activity affecting the screening of individuals who work with children, the crafting of any new federal and state legislation must be governed by a solid understanding of the issues. These complex issues include: identifying situations where children

are most at risk, improving the timeliness and accuracy of criminal record checks (e.g., enhanced data quality and disposition reporting), and developing procedures regarding the confidentiality and correction of background information. Improved communication and appropriate information-sharing between all relevant entities (e.g., child- and youth-serving organizations, federal and local law enforcement agencies, child protective services, licensing and regulatory agencies) will also go a long way toward the development of more effective responses to out-of-home abuse.

Criminal History Record Checks

As knowledge about out-of-home abuse has increased over the years, there has been a proliferation of wide-ranging ideas on how we should react. The area of criminal record checks and access to individual criminal history files, in particular, has received much attention and is a domain fraught with controversy and sticky moral and legal issues. Because empirically-based literature assessing criminal record screening of child care and youth-service workers is limited, current well-entrenched conflicts over the effectiveness of this type of screening are not likely to be settled anytime soon.

Based on the literature reviewed, we can conclude that criminal record checks are not the cure-all to preventing out-of-home child abuse perpetrated by any one of the millions of child care and youth-service workers. Even if all child- and youth-serving organizations enjoyed direct access, free of charge, to state and federal criminal history records, the problem of abuse would not magically be eradicated. Child abuse is a complex problem to which there is no quick fix. Criminal record checks obtained in a *timely* fashion can provide a useful and important piece of the employee/volunteer selection puzzle; however, they do not provide the complete picture of an applicant's suitability. And due to the lack of uniformity in existing state laws and regulations, criminal record checks are not applied consistently and across-the-board for all types of employees/volunteers who work with or around children. Further investigation regarding the appropriate use of criminal history information is needed, along with specific recommendations to increase the effectiveness of such checks.

Other Screening Mechanisms

The synopsis of other screening methods indicates that screening applicants against state child abuse or sex offender registries is not without problems, many of which are similar to criminal record checks (e.g., access, accuracy, timeliness, fairness to applicant, likelihood of identifying an individual with a record). The availability of child abuse and sex offender registry information, together with additional data maintained in systems such as the National Practitioner Data Bank and the Teacher Identification

Clearinghouse, also raises questions of efficiency. While each system may serve a slightly different function and keep its own separate records, there may be some duplication of efforts, especially with regard to criminal history repositories and sex offender registries. Further inquiry about the possible merging of systems and/or sharing of records would be useful for both providers and users of background information.

Some of the other screening mechanisms discussed are also subject to limitations. For example, valid documentation as to the effectiveness of psychological/personality testing in identifying potential abusers is lacking. And even standard reference checking has become hindered by fears of defamation and negligent hiring claims. Two relatively problem-free methods are a comprehensive application form and in-depth personal interview procedures. Although it is clear that all child- and youth-serving organizations should inquire about certain issues (e.g., criminal convictions, work and educational history), the range of more intensive questions asked may differ slightly depending on the type of child- and youth-serving agency and the applicant position being considered.

B. Preliminary Recommendations for Effective Screening

Although a number of issues remain for analysis and much empirical evidence must be gathered to properly evaluate the effectiveness of various screening methods, child care and youth-serving entities do have a number of available options to screen prospective employees/volunteers who work with children. The recommendations presented in the literature fall into three general categories: (1) procedures for organizations conducting criminal record checks; (2) general prevention strategies for all child- and youth-serving organizations; and (3) policies and procedures for state licensing agencies to prevent out-of-home abuse.

Conducting Criminal History Checks

At this juncture, it is worth reiterating to readers that criminal record checks are only a small part of good hiring practices. If a child- and youth-serving organization is going to employ criminal background checks, whether it's mandated by law or internal organizational policy, then it should do so with (1) a thorough understanding of and compliance with appropriate state and federal laws and regulations; (2) full disclosure to the applicant of the screening procedure and purpose for which information will be used; (3) written authorization/release from the applicant; and (4) strict procedures to maintain the confidentiality of the record information (Long, 1992). Additional recommendations pertaining to criminal record checks, as well as child abuse and sex offender registry checks include:[30]

- Establish appropriate statutory definitions of institutional abuse and neglect and clarification of rights and responsibilities of all parties in given settings.

- Separate the employment screening function from the use of the criminal history and child abuse registry information as a diagnostic and risk assessment tool.

- Draft regulations and organizational policies on the appropriate use of criminal history and child abuse registry information and develop specific criteria for using these mechanisms for employment and licensing purposes.

- Provide an appeal process before an administrative law judge or other appropriate party.

- Establish an oversight committee to study, evaluate and monitor the use of criminal history and child abuse registry information for employment and licensing purposes.

Despite all the unanswered questions and concerns about criminal record checks as a screening mechanism, Davidson (1985) concludes that "criminal record screening is an important, albeit imperfect, weapon in the arsenal which is available to the government and private employer to help protect children from maltreatment in out-of-home care. . . . Coupled with an effective pre-employment screening interview and scrupulous background check of references, the well-publicized conducting of a criminal record check becomes a device that should dissuade many pedophiles or other disturbed people," from gaining access to children through a child or youth-serving organization.

Developing Additional Prevention Strategies

A comprehensive background screening approach using the methods discussed throughout this report is a good first step in selecting quality child care and youth-service workers. But since screening is not foolproof in weeding out individuals who may harm children, an organization should consider adopting supplemental dissuasion measures. These auxiliary tactics can take the shape of succinct and explicit organizational policies and procedures. Ten of the more highly recommended actions to strengthen child abuse prevention efforts include:[31]

✓ Institute written organizational policies and train staff on identification and reporting of suspected child abuse by employees and volunteers.

- ✓ Report all allegations of abuse by staff to the organization's national headquarters, which may be able to help respond.

- ✓ Develop concrete policies for when an allegation of abuse is made against organizational employees or volunteers (e.g., restrict their contact with kids, deal with the problem immediately).

- ✓ Train parents and children to identify inappropriate employee/volunteer behavior.

- ✓ Require employees/volunteers to attend an orientation and sign a statement that they have read and understand the agency's written policies on treatment of children (e.g., discipline, management of difficult behavior) and the state reporting laws.

- ✓ Increase parental involvement and communication; adopt an open-door policy for parents to make unannounced visits at any time.

- ✓ Provide educational programs on child abuse -- in particular, on the identification and tendencies of child molesters -- for staff and other related community agencies.

- ✓ Inform employees and volunteers that the agency will cooperate with local officials (child protective services and law enforcement) in investigation of cases.

- ✓ Advocate for legal and judicial reforms which ease the trauma suffered by children who testify in court.

- ✓ Have at least two caregivers on duty at all times, including early morning and closing, to help minimize the problem that 80 percent of abuse substantiations rely wholly on a child's testimony with no corrobating information from other witnesses.

Increasing the Role of State Licensing Agencies

On a broader scope, efforts to protect children from out-of-home abuse are not restricted to an organization's use of background screening methods and establishment of internal policies and procedures. State licensing agencies, too, can play an important role in preventing and responding to abuse in out-of-home settings by facilitating interagency cooperation and promoting uniform procedures. Some general suggestions offered include:[32]

- Establish clear procedures for timely disposition of abuse cases, perhaps employing a multidisciplinary team approach (as promoted in intrafamilial cases);

- Implement a system for mutual reporting of complaints among Department of Social Services (DSS) and child care agencies and clarify investigative responsibilities and notification requirements between involved agencies;

- Adopt clearly written policies on information-sharing among agencies and implement mechanisms within and between states to track convicted offenders and prevent their continued work in child care facilities; and

- Revamp licensing/registration laws to include minimum staff qualifications; required reference-checking procedures; mandated training; state regional office technical assistance; clear definition of adequate supervision; basis for suspension or termination of employees/volunteers; and authorization of fiscal penalties and/or revocation of license. In revising these laws, particular consideration should be given to eliminating existing exemption clauses so licensing/registration mandates encompass all types of entities providing out-of-home care or other services to children and youth.

C. Looking Ahead to More Effective Screening and Other Prevention Efforts

Our review of the literature has confirmed the need for more thorough analyses of screening methods. Identifying effective screening procedures will obviously assist organizations in hiring suitable employees and volunteers and protecting the children they serve. Systematic evaluations will also help detect certain factors or problem areas that, if responded to, may result in significantly different outcomes. Such analyses thus form the basis for developing more effective strategies to prevent child abuse.

The Need for Cost-Benefit and Cost-Effectiveness Studies

Any future legislative or programmatic requirements must qualify matters of funding and include provisions for cost-benefit and cost-effectiveness analyses and other systematic evaluation procedures. With the slashing of federal, state and city budgets -- and the withering of private funding dollars -- government agencies, foundations and corporations, and numerous service providers are all being forced to make more judicious financial decisions. This necessitates comparisons among prevention strategies to identify the most cost-effective methods and to specify which approach will yield more benefit in reducing the many damaging effects of child abuse.

Despite increased awareness about out-of-home abuse, systematic research on the impact of abuse has not developed at the same pace. There is minimal empirical literature to help guide the planning of effective prevention and management of abuse (Gomes-Schwartz et al., 1990). Individual prevention strategies (e.g., criminal record checks, parent and child education, staff training) have not been compared to one another on a dollar-for-dollar basis. In addition to cost-effectiveness analyses, cost-benefit analyses would help address whether allocating scarce funds specifically to prevent out-of-home abuse -- instead of concentrating on abuse within the family -- has a greater impact in reducing the incidence of child abuse.

Current ABA Study on the Effective Screening of Child Care and Youth-Service Workers

As we conclude this report, readers are reminded that the purpose of this literature review is to identify and discuss the more prominent issues raised in the legal and social science literature regarding effective screening of child care and youth-service workers who may abuse children. This review serves to outline the framework for the current ABA Center on Children and the Law study of effective screening of child care and youth-service workers. With the support of the Office of Juvenile Justice and Delinquency Prevention (OJJDP), we hope that our present research efforts will shed light on many of the issues raised in this literature review. Through this on-going endeavor, the ABA Center on Children and the Law seeks not only to provide insight on what screening methods are available and currently being used by child- and youth-serving organizations, but also to identify those methods most effective in preventing out-of-home abuse. The final product of this two-year undertaking, to be completed in June 1994, will include recommendations for a national approach to screening of child care and youth-service workers, which we hope can be readily adopted and implemented by those organizations entrusted with the care of our children and youth.

80-609 O - 94 - 7

ENDNOTES

1. As part of the current study, the ABA Center on Children and the Law is developing a directory of the various types of child- and youth-serving organizations, complete with a listing of professions, jobs and volunteer positions; the estimated number of individuals in those given professions and positions; and the estimated number of children served. The directory will serve to identify the potential universe of those who work with or around children and analyze the degree of risk and accessibility to children in different settings.

2. The average center-based child care program enrolls 62 children, with enrollment ranging from fewer than 10 to more than 100 children. The average family day care program enrolls 6 children, with about half caring for fewer than 6 children and most of the remaining providers caring for between 6 and 10 children (Kisker et al., 1991).

3. At the beginning of 1990, there were approximately 80,000 center-based early education programs, with an average staff size of 10-11, and 118,000 regulated family day care providers, the majority working alone and 40 percent using an assistant (Kisker et al., 1991). Unregulated family day care homes alone may account for 60 to 90 percent of the total supply, meaning there may be anywhere from 496,000 to over 1.9 million such homes (Hayes et al., 1990).

4. Estimates for public and private school employees are based on figures from the *Digest of Education Statistics, 1992*; figures on volunteers are Volunteers in Public Schools (Michael, 1990). Staffing estimates for independent schools are extrapolated from the National Association of Independent Schools, whose membership accounts for two-thirds of all independent schools, employing an estimated 73,000 to 74,000 staff (*NAIS Statistics, 1992*).

5. See, e.g., Daro, 1988; Fuller, 1989; Gomes-Schwartz et al., 1990; Groth et al., 1982.

6. For possible offender characteristics, see, e.g., American Public Welfare Association (APWA), February 1988; Boy Scouts, 1987; California Association of Services for Children, 1987; Copeland and Haldopoulos, 1988; Finkelhor and Williams, 1988; Fuller, 1989; Goldstein, 1987; Haddock and McQueen, 1983; Lanning, 1987; Milner and Chilamkurti, 1991; Shaughnessy, 1984; Simon et al., 1992; and Wolff, 1982. For possible situational characteristics, see, e.g., APWA, February and June 1988, August 1989; New York State Subcommittee on Child Abuse, 1983; Rogers and James, 1991; and Shaughnessy, 1984.

7. The ABA Center on Children and the Law has sought to fill this gap by conducting an in-depth supplemental study on the effectiveness of screening practices in conjunction with the Department of Defense. This piece of the project will provide concrete information on the implementation, results and evaluation of background screening methods, in particular, criminal record checks. The Department of Defense makes an excellent host for such a study due to the law (P.L. 101-647) mandating screening of all employees in federally-operated or federally-contracted child caring facilities and the variety of settings (e.g., child development centers, schools, medical facilities, and voluntary, recreational groups) in which DoD serves children.

8. See, e.g., Justice et al., 1985; Lauten, 1985.

9. See, e.g., Abel et al., 1987; Colorado Department of Social Services, 1987; Rice et al., 1991.

10. Those readers interested in a more detailed discussion of criminal history information systems may want to read the Office of Technology Assessment's 1982 publication, *An Assessment of Alternatives for a National Computerized Criminal History System.*

11. In limited circumstances, employers may conduct nationwide screening through the FBI without utilizing a state agency intermediary. To wit, certain banking institutions, registered futures associations and nuclear power plants may directly request the FBI to screen its files (Davidson et al., 1991).

12. Information on fees was obtained from the Department of Defense (1993) and personal conversations with several state agencies responsible for processing criminal record checks.

13. See, e.g., Davidson et al., 1991; SEARCH Group, April 1984.

14. There is a plethora of literature discussing the right to privacy. For a general discussion of the federal constitutional right to privacy including informational privacy, which Prof. Alan Westin (Privacy and Freedom, 1967) has defined as "the claim of individuals, groups, or institutions to determine for themselves when, how an to what extent information about them is communicated to others," see, e.g., Cass, 1991; Grossberg, 1991; Turkington, 1990.

15. See, e.g., Turkington, 1990.

16. See, e.g., SEARCH Group, April 1984; Bureau of Justice Statistics, 1981.

17. Davidson et al., 1991 discussing *New York v. Ferber*, 454 U.S. 1052 (1982).

18. See, e.g., the Bureau of Justice Statistics (BJS), January 1992; BJS, November 1990; BJS, April 1989; BJS, November 1988a and 1988b; BJS, 1982; SEARCH Group, July 1988b; SEARCH Group, March 1983; SEARCH Group, November 1981.

19. It should be noted that Title VII only applies to paid employees; volunteers are not covered. Davidson et al. (1991) citing *Smith v. Berks Community Television*, 794 F. Supp. (E.D. Pa. 1987).

20. See, e.g., Bates, July 1990; Cohen, 1985a.

21. See, e.g., *ABA Juvenile and Child Welfare Law Reporter*, 1992, 11:107 discussing *Grimes v. Cavazos*, 786 F. Supp. 1184 (S.D.N.Y. 1992) where the state and city were found not liable under section 1983 because the intent to discriminate was not alleged; *ABA Juvenile and Child Welfare Law Reporter*, 1991, 10:148, discussing *Millspaugh v. County Department of Public Welfare*, 937 F.2d 1172 (7th Cir. 1991).

22. SEARCH Group (April 1984) also discusses "public disclosure of private facts," one of the four types of the tort invasion of privacy. The extent to which this and other types of invasion of privacy actions have been the basis for challenges due to inaccurate criminal record dissemination is unclear from the legal literature reviewed.

23. Titus and DeFrances (1989) found that within the public schools, the person(s) responsible for evaluating the impact of background information were: superintendents (78 percent); principals; (33 percent); personnel departments (27 percent); department heads (5 percent); general counsels (4 percent); school boards (3 percent) and security offices (1 percent).

24. See, e.g., Davidson et al., 1991; Gordon, 1986-87; Morgan, 1984; Titus and DeFrances, 1989.

25. See, e.g., Maney and Wells, 1988; Sale et al., 1988.

26. Information on state sex offender registries comes primarily from an ABA Center on Children and the Law survey (February 1993) of Attorneys General from the 50 states and the District of Columbia. Supplemental information was gathered from a December 1992 draft report from the National Center on Missing and Exploited Children (NCMEC); a February 1993 internal memo from the Idaho Attorney General's Office; and a December 1992 report from the Washington State Institute for Public Policy. The states that have sex offender registration requirements include Alabama, Arizona, Arkansas, California, Colorado, Florida, Illinois, Louisiana, Maine, Minnesota, Montana, Nevada, New Hampshire, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, Texas, Utah and Washington. Those states that have introduced or drafted legislation include: Alaska, Idaho, Iowa, Kansas, Kentucky,

Michigan, Mississippi, New York, South Carolina, Tennessee, Wisconsin and Wyoming. In addition, several states collect DNA samples from sex offenders after their arrest for profiling analysis. (South Dakota, for example, reported it is in the process of cooperating with other states and the FBI to establish a national DNA data bank to assist in the solving and prosecution of future sex crimes.) Readers also may be interested to know that Wisconsin has developed a nursing home assistants abuse registry to prevent abusive assistants from future employment at any federally certified Wisconsin nursing home facility. This register also covers employees and institutional aides at facilities which serve developmentally disabled children.

27. For information on interviewing applicants, see, e.g., Ball, 1986; Colorado Department of Social Services, 1987; Hoeltke and Ross, 1987; Patterson, 1991.

28. See, e.g., Anderson, 1988; Carrilio, 1987; Murphy and Peters, 1992.

29. See, e.g., Broadhurst, 1986; Copple, 1990; Finkelhor and Williams, 1988; Staley et al., 1986.

30. See, e.g., Cohen, 1985a; Davidson, 1986a; Sale et al, 1988; Rutledge, 1992.

31. See, e.g., Baker and Collier, undated; Davidson, 1986b; Wolff, 1982.

32. See, e.g., Davidson, 1985; Kusserow, 1990; Russell and Clifford, 1987; New York State Subcommittee on Child Abuse, 1983.

REFERENCES AND SELECTED BIBLIOGRAPHY

Abel, G.; Becker, J.; Mittelman, M.; Cunningham-Rathner, J.; Rouleau, J.; and Murphy, W. (1987). "Self-Reported Crimes of Nonincarcerated Paraphiliacs," *Journal of Interpersonal Violence*, 2:3-25.

"Abuse in the Nursery School - A License is No Safety Guarantee," *Los Angeles Times*, April 2, 1984, I:3.

Adams, G. (1990). *Who Knows How Safe: The Status of State Efforts to Ensure Quality Child Care,* Washington, DC: Children's Defense Fund.

Allred, S. (1988). "School Personnel Records: New Requirements for Ensuring Employee Privacy," *School Law Bulletin*, 19:1.

Alexander, E. (1992). "The Right to Privacy and the New York State Constitution," *Touro Law Review*, 8:725.

American Public Welfare Association (June 1991). *Fifth National Roundtable on CPS Risk Assessment: Summary of Highlights*, Washington, DC: Author.

American Public Welfare Association (August 1990). *Fourth National Roundtable on CPS Risk Assessment: Summary of Highlights*, Washington, DC: Author.

American Public Welfare Association (February 1988). *Risk Assessment in Child Protection: A Review of the Literature*, Washington, DC: Author.

American Public Welfare Association (June 1988). *Validation Research in CPS Risk Assessment: Three Recent Studies*, Washington, DC: Author.

Anderson, M. (1988). "Screening Direct Care Workers for Child Abuse Potential," Washington, DC: U.S. Department of Education, Office of Educational Research and Improvement (ED337484).

Archdiocese of Chicago (June 1992a). "Bernardin to Implement 'Landmark' Study", Press Release, Chicago, IL: Author.

Archdiocese of Chicago (June 1992b). *The Cardinal's Commission on Clerical Sexual Misconduct with Minors*, Report to Joseph Cardinal Bernardin, Archbishop of Chicago, Chicago, IL: Author.

Archdiocese of Chicago (June 1992c). *The Cardinal's Commission on Clerical Sexual Misconduct with Minors*, Report to Joseph Cardinal Bernardin, Archbishop of Chicago, Appendices, Chicago, IL: Author.

Archdiocese of Chicago, (September 1992). *Clerical Sexual Misconduct with Minors: Policies for Education, Prevention, Assistance to Victims and Procedures for Determination of Fitness for Ministry*, Chicago, IL: Author.

Archdiocese of Seattle (1990). *Archdiocesan Policy in Cases of Sexual Misconduct*, Seattle, WA: Author.

Atten, D. and Milner, J. (1987). "Child Abuse Potential and Work Satisfaction in Day Care Employees," *Child Abuse and Neglect*, 11: 117-23.

Baas, A. (1990). "Background Checks on School Personnel," U.S. Department of Education, Office of Educational Research and Improvement, Washington, DC (ED 324767).

"Bad Teachers Being Swept Under Carpet," *The News Chief*, Sept. 25, 1984, A:1.

Baker, C. and Collier, D. (undated). *Active Prevention: Preventing Child Abuse and False Allegations in the Child Care Setting*, unpublished, contact Children's Day Care Unit, Division of Licensing and Regulation, Social and Rehabilitation Services, State of Vermont.

Ball, A. (1986). "Protecting Our Campers: Screening, Reference Checks, Supervision Help You Reduce Chances for Child Abuse," *Camping Magazine*, 58 (January):18-19.

Bates, N. (1990). "Understanding the Liability of Negligent Hiring," *Security Management*, 34:7A-10A (special supplement).

Beaty, P. and Woolley, M. (1985). "Child Molesters Need Not Apply: A History of Pennsylvania's Child Protective Services Law and Legislative Efforts to Prevent the Hiring of Abusers by Child Care Agencies," *Dickinson Law Review*, 89:669.

Becker, J. and Hunter, J. (1992). "Evaluation of Treatment Outcome for Adult Perpetrators of Child Sexual Abuse," *Criminal Justice and Behavior*, 19(1): 74-92.

Berlin, F.; Malin, H.M.; and Dean, S. (1991). "Effects of Statutes Requiring Psychiatrists to Report Suspected Sexual Abuse of Children," *American Journal of Psychiatry*, 148(4): 449-453.

Big Brothers/Big Sisters of America (November 1989). "Training of Volunteers," November 1989, Philadelphia, PA: Author.

Big Brothers/Big Sisters of America (July 1988). "Policy Statement: Volunteer Selection and Assignment," Philadelphia, PA: Author.

Big Brothers/Big Sisters of America (June 1988). "Developing Effective Methods to Screen Volunteers Working with Children," Executive Summary, Philadelphia, PA: Author.

Big Brothers/Big Sisters of America (August 1987). "Psychological Screening of BB/BSA Volunteers: Three Test Recommendations," Philadelphia, PA: Author.

Big Brothers/Big Sisters of America (June 1986). "A Model Policy on Confidentiality of Records," Philadelphia, PA: Author.

Big Brothers/Big Sisters of America (November 1985). "Proposed Model State Legislation Concerning Police Checks," Philadelphia. PA: Author.

Bloom, R. (1992). "When Staff Members Sexually Abuse Children in Residential Care," *Child Welfare*, 71:131-145.

Boy Scouts of America (1987). *Youth Protection Guidelines for Scout Camp Leaders*, Irving, TX: Author.

Boys Clubs of America (February 1986). *Suggested Guidelines for Hiring Full-time, Part-time and Volunteer Staff*, New York, NY: Author.

Broadhurst, D. (1986). *Educators, Schools and Child Abuse*, Chicago, IL: National Committee for Prevention of Child Abuse.

Bulkley, J. and Jackson, J. (1989). "State Child Care Licensing Laws in the Fifty States: A New Look in the Face of Child Abuse," *Children's Legal Rights Journal*, 10:13.

Burdsal, J. (1989). "Potential for Abuse Among Workers in a Preschool Child Development Program," Washington, DC: U.S. Department of Education, Office of Educational Research and Improvement (ED 308424).

Bureau of Justice Statistics (July 1992). *Criminal History Record Information: Compendium of State Privacy and Security Legislation, 1992,* Washington, DC: U.S. Department of Justice, Office of Justice Programs, NCJ-137058.

Bureau of Justice Statistics (February 1992). *Attorney General's Program for Improving the Nation's Criminal History Records,* Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics Implementation Status Report, NCJ-134722.

Bureau of Justice Statistics (January 1992). *National Conference on Improving the Quality of Criminal History Records, proceedings of a BJS/SEARCH conference*, Washington, DC: U.S. Department of Justice, Office of Justice Programs, NCJ-133532.

Bureau of Justice Statistics (June 1991). *Statutes Requiring the Use of Criminal History Record Information*, Washington, DC: U.S. Department of Justice, Office of Justice Programs, NCJ-129896.

Bureau of Justice Statistics (March 1991). *Survey of Criminal History Information Systems*, Washington, DC: U.S. Department of Justice, Office of Justice Programs, NCJ-125620.

Bureau of Justice Statistics (November 1990). *Criminal Justice Information Policy: Original Records of Entry*, Washington, DC: U.S. Department of Justice, Office of Justice Programs, NCJ-125626.

Bureau of Justice Statistics (October 1990). *Tracking Offenders, 1987,* Washington, DC: U.S. Department of Justice, Office of Justice Programs, NCJ-125315.

Bureau of Justice Assistance (June 1990). *Access to Criminal History Records by TASC Programs: A Report on Current Practice and Statutory Authority*, Washington, DC: U.S. Department of Justice, Office of Justice Programs.

Bureau of Justice Statistics (April 1990a). *Compendium of State Privacy and Security Legislation: 1989 Overview*, Washington, DC: U.S. Department of Justice, Office of Justice Programs, NCJ-121157.

Bureau of Justice Statistics (April 1990b). *Criminal Justice in the 1990's: The Future of Information Management,* Washington, DC: U.S. Department of Justice, Office of Justice Programs, NCJ-121697.

Bureau of Justice Statistics (April 1989). *Strategies for Improving Data Quality*, Washington, DC: U.S. Department of Justice, Office of Justice Programs, NCJ-111458.

Bureau of Justice Statistics (November 1988a). *Criminal Justice Information Policy: Public Access to Criminal History Record Information*, Washington, DC: U.S. Department of Justice, Office of Justice Programs, NCJ-111458.

Bureau of Justice Statistics (November 1988b). *Open vs. Confidential Records, Proceedings of a BJS/SEARCH Conference*, Washington, DC: U.S. Department of Justice, Office of Justice Programs, NCJ-113560.

Bureau of Justice Statistics (April 1987). *Automated Fingerprint Identification Systems: Technology and Policy Issues*, Washington, DC: U.S. Department of Justice, Office of Justice Programs, NCJ-104342.

Bureau of Justice Statistics (November 1986). *Criminal Justice "Hot" Files*, Washington, DC: U.S. Department of Justice, Office of Justice Programs, NCJ-101850.

Bureau of Justice Statistics (October 1985a). *Crime Control and Criminal Records*, Washington, DC: U.S. Department of Justice, Office of Justice Programs, NCJ-99176.

Bureau of Justice Statistics (October 1985b). *Data Quality of Criminal History Records*, Washington, DC: U.S. Department of Justice, Office of Justice Programs, NCJ-98079.

Bureau of Justice Statistics (October 1985c). *State Criminal Records Repositories*, Washington, DC: U.S. Department of Justice, Office of Justice Programs, BJS Technical Report, NCJ-99017.

Bureau of Justice Statistics (December 1984). *Tracking Offenders: The Child Victim*, Washington, DC: U.S. Department of Justice, Office of Justice Programs, NCJ-95785.

Bureau of Justice Statistics (June 1982). *Survey of State Laws: Criminal Justice Information Policies*, Washington, DC: U.S. Department of Justice, Office of Justice Programs, NCJ-80836.

Bureau of Justice Statistics (1982). *Criminal Justice Information Policy: Privacy and Juvenile Justice Records*, Washington, DC: U.S. Department of Justice, Office of Justice Programs, NCJ-84152.

Bureau of Justice Statistics (1981). *Criminal Justice Information Policy: Privacy and the Private Employer*, Washington, DC: U.S. Department of Justice, Office of Justice Programs, NCJ-79651.

California Association of Services for Children and Department of the Youth Authority (November 1987). *Assuring a Safe Environment in Residential Facilities for Children and Youth,* Sacramento, CA: Author.

Cane, M. (1988). "The Day Care Insurance Dilemma" *Trial Advocate Quarterly*, 7:59.

Carnegie Council on Adolescent Development (1992). *A Matter of Time: Risk and Opportunity in the Nonschool Hours,* Report of the Task Force on Youth Development and Community Programs, New York, NY: Carnegie Corporation of New York.

Carrilio, T. (1987). "Presentation of Psychological Testing/Screening at the National Collaboration for Youth Sexual Child Sexual Abuse Workshop," Philadelphia, PA: Big Brothers/Big Sisters of America.

Carson, M. (1989). *On the Safe Side: Preventing Child Abuse in Residential Care,* Sacramento, CA: California Association of Services for Children.

Carter, M. (January 1986). "Securing Quality Staff: Will Criminal History Checks Help?" *Exchange*, 31-32.

Cass, R. (1991). "Privacy and Legal Rights," *Case Western Law Review*, 41:867.

"Child-Care Fingerprint Data Disputed," *New York Times,* Dec. 5, 1984.

"'Child Molesting in Our Schools?' Education Officials Along the East Coast Say it Couldn't Happen - But it Does," *The News Chief*, September 24, 1984, A:5.

Children's Defense Fund (1992). *The State of America's Children: Leave No Child Behind*, Washington, DC: Author.

"Church Neglect Alleged" *The Washington Post,* January 8, 1993, A:8.

"Church-Operated Day Care Subject to State Licensing," *Zoning and Planning Law Report*, 8 (October 1985):160.

"City Moves on Plan to Fingerprint Thousands to Protect Youngsters," *New York Times*, October 1984, B:1.

Cohen, A. (1985a). *Vigilant in the Protection of Our Children or Vigilantes? Legal Considerations in Drafting Screening Laws and Recommendations for Safeguarding Children in Child Care Settings*, San Francisco, CA: Child Care Law Center.

Cohen, A. (1985b). *Use of Statewide Central Child Abuse Registries for Purposes of Screening Child Care Workers: False Promises and Troubling Concerns*, San Francisco, CA: Child Care Law Center.

Collyer, R. and Eastus, V. (1991). "Reference Checking: The Sources to Use and Pitfalls to Avoid" *Human Resource Management Legal Report*, Society for Human Resource Management, Summer 1991:1-5.

Colorado Department of Social Services (1987). *Selection and Screening of Personnel: An Effort Toward the Prevention of Maltreatment of Children and Youth in Out-of-Home Care Settings in Colorado*, Denver, CO: Author.

Committee on the Judiciary (May 1989). *Child Abuse*, Hearing before the U.S. Senate, 101st Congress, First Session on the Treatment of Child Abuse Allegations and Victims in the Judicial and Victims Services System, May 16, 1989.

Committee on the Judiciary (November 1991). *Protecting Children in Day Care: Building a National Background Check System*, Hearing before the U.S. Senate, 102nd Congress, First Session on The National Child Protection Act of 1991, November 12, 1991.

"Computer Based Technology in Police Work: A Cost-Benefit Analysis of a Mobile Digital Communications System," *Journal of Criminal Justice*, 16 (1988):47-60.

Congressional Record, June 27, 1991, S8888-89. RE: Amendment No. 409 to require State agencies to register all offenders convicted of any acts involving child abuse with the National Crime Information Center of the Dept of Justice ("National Child Abuser Registration Act of 1991").

Conte, J. et al (1989). "What Sexual Offenders Tell Us About Prevention Strategies," *Child Abuse and Neglect*, 13: 293-301.

Copeland, M. and Haldopoulos, M. (1988). "Selecting and Training In-Home Child Caregivers," *Early Child Development and Care*, 33:127-136.

Copple, C. (1990). *"Quality Matters: Improving the Professional Development of the Early Childhood Work Force,"* New York, NY: Carnegie Corporation of New York.

Daro, D. (1991). "Child Sexual Abuse Prevention: Separating Fact from Fiction," *Child Abuse and Neglect*, 15: 1-4.

Daro, D. (1988). Confronting Child Abuse: Research for Effective Program Design, New York, NY: The Free Press.

Daro, D. and McCurdy, K. (1992). *Current Trends in Child Abuse Reporting and Fatalities: The Results of the 1991 Annual 50 State Survey*, Chicago, IL: National Center on Child Abuse Prevention Research, National Committee for Prevention of Child Abuse.

Davidson, H.; Sprague, M.; and Feller, J. (1991). *Final Report to the National Collaboration for Youth on Criminal Record Checks*, Washington, DC: ABA Center on Children and the Law.

Davidson, H. (1986a). "Legal Responses to the Abuse of Children in Out-of-Home Care," *Children's Legal Rights Journal* 7:2.

Davidson, H. (1986b). "Personnel Practices for the Prevention and Detection of Child Sexual Abuse," *Connections*, publication of Boys Clubs of America.

Davidson, H. (1985). "Protection of Children Through Criminal History Record Screening: Well-Meaning Promises and Legal Pitfalls," *Dickinson Law Review*, 89:577.

Day Care U.S.A. Newsletter, Day Care Information Service, 15(9), April 14, 1986.

Department of Defense (1993). "Criminal History Background Checks on Individuals in Child Care Services," Department of Defense Instruction 1402.5, Arlington, VA: Author.

Department of Health and Rehabilitative Services (December 1992). *Child Protection Strategic Plan*, Tallahassee, FL: Author.

Ditter, R. (1986a). "Protecting Our Campers: How to Recognize Various Forms of Child Abuse," *Camping Magazine*, 58 (January).

Ditter, R. (1986b). "Ensuring Our Campers' Well-Being: Effective Staff Training Minimizes Any Risk of Child Abuse Incidences," *Camping Magazine*, 58 (February): 9.

Downing, J.; Wells, S.; and Fluke, J. (1990). "Gatekeeping in Child Protective Services: A Survey of Screening Policies," *Child Welfare*, 64(4): 357-369.

Dube, R. and Hebert, M. (1988). "Sexual Abuse of Children Under 12 Years of Age: A Review of 511 Cases," *Child Abuse and Neglect*, 12:321-30.

Eckenrode, J. (1988). "The Nature and Substantiation of Official Sexual Abuse Reports," *Child Abuse and Neglect*, 12:311-19.

"End Screening on Day Care, Cuomo Says," *The New York Times*, March 12, 1993, B:1.

"Fairfax Schools Relax Substitute Teacher Rules," *The Washington Post*, October 22, 1992, B:3.

Falby, B. (1982). "A Constitutional Right to Avoid Disclosure of Personal Matter: Perfecting Privacy Analysis in J.P. v. DeSanti, 653 F.2d 1080 (6th Cir. 1981)," *Georgetown Law Review Journal*, 71:219.

"A Family Sets the Record Straight," *The Washington Post*, October 4, 1992, B:1.

Fandetti, K. and Ohsberg, L. (1987). "Rhode Island's Child Protective Service System," *Child Welfare*, 66:527-538.

"Farrell: Would Have Warned Florida of Shaver," *Honolulu Advertiser*, February 4, 1990: A:3.

Final Report of President's Task Force on Victims of Crime, December 1982, Executive and Legislative Recommendation 9, 32-33.

"Fingerprint Checks Proposed for School Workers," *Star-Bulletin*, November 13, 1991, A:7.

"Fingerprinting New York State Job Applicants: Invasion of Privacy or Valid Means of Identification," *Columbia Journal of Law and Social Problems*, 10 (1991):91-115.

Finkelhor, D. and Williams, L. (1988). Nursery Crimes: Sexual Abuse in Day Care, Newbury Park, CA: Sage Publications, Inc.

Finn, T. and Coleman, M. (1985). "The Institutional and Educational Abuse of Children in State Care." *Suffolk University Law Review*, 19:227.

Firehock, G. (1992). "The Increased Invulnerability of Incorrect Records Maintained by Law Enforcement Agencies: Doe v. FBI," *George Washington University Law Review*, 60:1509.

Flaherty, D. (1991). "On the Utility of Constitutional Rights to Privacy and Data Protection," *Case Western Law Review*, 41:831.

"Florida Cracking Down on Undesirable Teachers," *The News Chief*, September 24, 1984, A:1.

Fossey, R. (1986). "Legal Aspects of Child Abuse and Public Schools," *School Law in Review*, 1986:55-62.

Frank, C. (1992). "Employee Background Checks: Negligent Hiring," *Texas Bar Journal*, 55:118-20.

Frierson, J. (1988a). "Dangerous Violations of Employment Laws Found in Almost All Applications," *Preventative Law Reporter*, 7:3.

Frierson, J. (1988b). "What are the Alternatives as Polygraph Exams for Employees Come to an End?" *Preventative Law Reporter*, 7:10.

Fuller, K (1989). "Child Molestation and Pedophilia: An Overview for the Physician," *Journal of the American Medical Association*, 261: 602-606.

Furby, L.; Weinrott, M.; and Blackshaw, L. (1989). "Sex Offender Recidivism: A Review," *Psychological Bulletin*, 105(1):3-30.

"Further Screening Possible: Youth Workers May be Fingerprinted," *The Denver Post*, December 24, 1990, B:2.

Gil, E. (undated). *Recommended Guidelines for Investigation of Suspected Abuse/Neglect of Children in Out-of-Home Care,* San Francisco, CA: San Francisco Child Abuse Council.

Gilgun, J. and Connor, T. (1989). "How Perpetrators View Child Sexual Abuse," *Social Work*, 34:249-251.

Goldstein, S. (1987). The Sexual Exploitation of Children: A Practical Guide to Assessment, Investigation and Intervention, New York, NY: Elsevier Science Publishing Company.

Gomes-Schwartz, B.; Horowitz, J.; and Cardarelli, A. (1990). Child Sexual Abuse: The Initial Effects, Newbury Park, CA: Sage Publications, Inc.

Gordon, D. (1986-87). "The Electronic Panopticon: A Case Study of the Development of the National Criminal Records System," *Politics and Society*, 15(4): 483-511.

Gray, N. (1986). *An Ounce of Prevention: An Administrative Guide for Day Care Center Directors*, Washington, DC: U.S. Department of Education, Office of Educational Research and Improvement (ED285637).

Green, R. and Reibstein, R. (1987). "It's 10 p.m. Do You Know Where Your Employees Are?" *Personnel Administrator*, 32:70-76.

Grossberg, M. (1991). "Some Queries About Privacy and Constitutional Rights," *Case Western Law Review*, 41:857.

Groth, N.; Longo, R.; and McFadin, J.B. (1982). "Undetected Recidivism Among Rapists and Child Molesters," *Crime and Delinquency*, 28:450-458.

Guggenheim, M. (1991). "The Effect of Tort Law on Child Welfare Liability," Chapter 6 in *Liability in Child Welfare and Protection Work: Risk Management Strategies*, M. Sprague and R. Horowitz, (eds), Washington, DC: ABA Center on Children and the Law.

Haddock, D. and McQueen, W. (1983). "Assessing Employee Potentials for Abuse," *Journal of Clinical Psychology*, 39:1021-1029.

Haerle, C. (1984). "Minnesota Developments: Employer Liability for the Criminal Acts of Employees Under Negligent Hiring Theory: *Ponticas v. KMS Investments*," *Minnesota Law Review*, 68:1303, 1311-12.

Hahn, J. (1991). "Pre-employment Information Services: Employers Beware?" *Employee Relations Law Journal*, 17:45.

Hames, D. (1988). "When Must Employers Answer to Third Parties for Injuries Caused by Their Employees' Negligence or Intentional Acts?" *Labor Law Journal*, 39:781-94.

Hanson, R. (ed) (1982). Institutional Abuse of Children and Youth, New York, NY: Hawthorne Press.

Hayes, C.; Palmer, J.; and Zaslow, M. (eds) (1990). Who Cares for America's Children? Child Care Policy for the 1990s, Washington, DC: National Academy Press.

"Hiding the Sins of the Fathers: Why Does the Church Protect Pedophiles and Not Their Victims?" *The Washington Post*, November 15, 1992, C:5.

Hill, W. (1990), "Getting Help From the Outside," *Security Management*, 34:15a-19a (special supplement).

Hoeltke, G. and Ross, A. (1987). "An Interviewing Tool for Selection of Residential Child Care Workers: A Follow-Up Report," *Child Welfare*, 66:175-83.

"How Children's Safety can be Put in Jeopardy by Day Care Personnel," *The Wall Street Journal*, October 18, 1988, A:1.

Howard, S. (1988). "Negligent Hiring and Employer Liability in the Selection of Employees," *Educational Law Reporter (West)*, 49:1,3.

"Implications for Child-Care Programs," chapter 4 in *Child Protection: Guidebook for Child-Care Providers* (July 1991), Washington, DC: National Center on Missing and Exploited Children.

"John Walsh: Educational System 'Covering Up' for Child Abusers," *The News Chief*, September 27, 1984, A:1.

Jones, J.; Joy, D.; and Martin, S. (1990). "A Multidimensional Approach for Selecting Child Care Workers," *Psychological Reports*, 67:543-53.

Justice, J.; Muenchow, S.; and Wilson, J. (1985). "Protecting Children in Child Care Programs," *Florida Bar Journal*, 59:21.

Kelso, J.C. (1992). "Constitutional Right to Privacy," *Pepperdine Law Review*, 19:327.

Kisker, E.; Hofferth, S.; Phillips, D.; and Farquhar, E. (1991). *A Profile of Child Care Settings: Early Education and Care in 1990,* Princeton, NJ: Mathematica Policy Research, Inc. (under contract for the U.S. Department of Education).

Kusserow, R. (1990). *Effective Practices in Enforcing Child Care Regulation*, Inspector General, source not indicated.

Lanning, K. (April 1987). *Child Molesters: A Behavioral Analysis For Law Enforcement Officers Investigating Cases of Child Sexual Exploitation*, Washington, DC: National Center for Missing and Exploited Children, 2nd edition.

Laudon, K. (1986). The Dossier Society: Value Choices in the Design of National Information Systems, New York, NY: Columbia University Press.

Lauten, N. (1985). "Who's Minding the Cradle? Regulatory Reform in the Child Care Industry," *Florida State University Law Review*, 13:633.

Leebron, D. (1991). "The Right to Privacy's Place in the Intellectual History of Tort Law," *Case Western Law Review*, 41:769.

Legislative History to Public Law 99-660 (1986). House Report No. 99-903, Energy and Commerce Committee, September 26, 1986.

Leland, C. (1985). "Spare the Coverage, Spoil the Child," *California Lawyer*, 5:19.

Lewis, R. (1988). *Effectiveness of Statutory Requirements for the Registration of Sex Offenders: A Report to the California State Legislature*, Sacramento, CA: California Department of Justice, Division of Law Enforcement, Criminal Identification and Information Branch, Bureau of Criminal Statistics and Special Services.

Long, R. (1992). The Guide to Background Investigations, 5th edition, Tulsa, OK: National Employment Screening Services.

Long, R. (1989). "The Private Use of Public Records," *Security Management*, 33:47-51.

Lotitio, M. and Bryant, M. (1988). "Reference Checking: Are the Professional's Hands Tied?" *Human Resource Management Legal Report*, Society for Human Resource Management, Spring 1988:4-7.

Lowe, R. (1981). "Regulation of Polygraph Testing in the Employment Context: Suggested Statutory Control on Test Use and Examiner Competence," *U.C. Davis Law Review*, 15:113.

Lynch, J. (1992). "A Matter of Trust: Institutional Employer Liability for Acts of Child Abuse by Employees," *William and Mary Law Review*, 33:1295-1317.

Maney, A. and Wells, S. (1988). Professional Responsibilities in Protecting Children, New York, NY: Praeger Publishers.

Margolin, L. (1991a). "Abuse and Neglect in Nonparental Child Care: A Risk Assessment," *Journal of Marriage and the Family*, 53:694-704.

Margolin, L. (1991b). "Child Sexual Abuse by Nonrelated Caregivers," *Child Abuse and Neglect*, 15:213-21.

Margolin, L. and Craft, J. (1990). "Child Abuse by Adolescent Caregivers," *Child Abuse and Neglect,* 14:365-373.

Margolin, L. and Craft, J. (1989). "Child Sexual Abuse by Caretakers," *Family Relations,* 38:450-55.

Martens, R. (1986). "Youth Sport in the USA," in Weiss, M. and Gould, D. (eds), Sport for Children and Youths, Champaign, IL: Human Kinetics Publishers, Inc.

Matsushima, J. (1990). "Interviewing for Alleged Abuse in the Residential Treatment Center," *Child Welfare*, 69:321-331.

McCormack, A. and Selvaggio, M. (1989). "Screening for Pedophiles in Youth-Oriented Community Agencies," *Social Casework*, 70:37-42.

McEvoy, A. (1990). "Child Abuse Law and School Policy," *Education and Urban Society*, 22:247-57.

Michael, B. (1990). Volunteers in Public Schools, National Research Council, Washington, DC: National Academy Press.

Miller, G. and Fenton, J. (1991). "Negligent Hiring and Criminal Record Information: A Muddled Area of Employment Law," *Labor Law Journal*, 42:186-92.

Milner, J. (1991). "Physical Child Abuse Perpetrator Screening and Evaluation," *Criminal Justice and Behavior,* 18:47-63.

Milner, J. and Chilamkurti, C. (1991). "Physical Child Abuse Perpetrator Characteristics: A Review of the Literature," *Journal of Interpersonal Violence*, 6(3):345-366.

Milner, J. and Robertson, K. (1989). "Inconsistent Response Patterns and the Prediction of Child Maltreatment," *Child Abuse and Neglect*, 13:59-64.

"More Screening of Priest Candidates Urged," *Detroit News*, January 17, 1992, A:7.

Morgan, G. (1984). "Do Criminal Record Checks Protect Children?" *Child Care News*, 11(4):1.

Murphy, W. and Peters, J. (1992). "Profiling Child Sexual Abusers: Psychological Considerations," *Criminal Justice and Behavior,* 19(1):24-37.

Murray, K. (1986). "Legal Aspects of the Selection Process," *Exchange*, 27-30.

Murray, K. and Stevenson, C. (1983). "Insuring Your Program: Liability Insurance," San Franciso, CA: Child Care Law Center.

National Association of Counsel for Children and American Association for Protecting Children (1986). *Managing Risks While Protecting Children*, Denver, CO: Author.

National Association of Independent Schools (1992). *NAIS Statistics 1992*, Washington, DC: Author.

National Center for Education Statistics (1992). *Digest of Education Statistics, 1992*, Washington, DC: U.S. Department of Education, Office of Educational Research and Improvement.

National Center for Missing and Exploited Children (1992). *Selected State Legislation: A Guide for Effective State Laws to Protect Children*, 3rd edition (Draft), Washington, DC: Author.

National Center for State Courts (May 1988). *Central Registries for Child Abuse and Neglect: National Review of Records Management, Due Process Safeguards and Data Utilization*, Williamsburg, VA: Author.

National Center on Child Abuse and Neglect (1990). *National Child Abuse and Neglect Data System Working Paper I: 1990 Summary Data Component*, Washington, DC: U.S. Department of Health and Human Services.

National Conference of Catholic Bishops (November 1992). Resolution, General Meeting, November 16-19, 1992, Washington, DC: Author.

National Conference of Catholic Bishops (June 20, 1992). Statement of Archbishop Pilarczyk, President of the National Conference of Catholic Bishops, on the Sexual Abuse of Children, Washington, DC: Author.

National Conference of Commissioners of Uniform State Laws (January 1985). "Criminal History Records Act," (Draft for Discussion Only), Chicago, IL: Author.

National Institute of Mental Health (July 1991), "Residential Treatment Centers and Other Organized Mental Health Care for Children and Youth: United States, 1988," *Mental Health Statistical Note No. 198*, Rockville, MD: U.S. Department of Health and Human Services, Public Health Service.

Nemecek, D. (1990). "NCIC 2000: Technology Adds a New Weapon to Law Enforcement's Arsenal," *The Police Chief*, 62(4):30-33.

New York State Senate Committee on Investigations and Taxation (October 1984). *Reducing the Risk of Child Abuse: An Examination of School and Day Care Employee Screening Procedures*, Albany, NY: Author.

New York State Senate Subcommittee on Child Abuse (September 1983). *Protection of Children in Residential Care: A Study of Abuse and Neglect in Child Care Institutions in New York State,* Albany, NY: Author.

"No Child Abuse, No Adult Abuse," *New York Times*, March 2, 1985, A:23.

"No System for Child-Abuse Cases," *New York Times*, November 11, 1984, A:26.

"Nobody Testifies at DOE's Hearings on Criminal Check," *Honolulu Advertiser,* November 13, 1991, A:4.

Nunno, M. and Motz, J. (1988). "The Development of an Effective Response to the Abuse of Children in Out-of-Home Care," *Child Abuse and Neglect*, 12:521-28.

Office of Technology Assessment (October 1982). *An Assessment of Alternatives for a National Computerized Criminal History System*, Washington, DC: Congress of the United States.

"Officials Question Costs of Day-Care Screenings," *Prince George's Journal*, November 26, 1984, A:1.

O'Meara, J. (1985). "The Emerging Law of Employees' Right to Privacy" *Personnel Administrator*, 6:159-165.

Page, N. (1986). "The Insurance Crisis: Who's Looking After Day Care?" *Harvard Women's Law Journal*, 9:199.

Pankau, E. (1990). "I Screen, You Screen," *Security Management*, 34:13a-14a (special supplement).

"Parents Kept in Dark About Alleged Abuse at Day-Care Center," *The Washington Post,* August 16, 1992, B:1.

Patterson, J. (July 1991). *Child Protection: Guidebook for Child-Care Providers*, Washington, DC: National Center for Missing and Exploited Children and National Committee for Prevention of Child Abuse.

"Pedophiles: Special Breed of Child Abusers," *The News Chief*, September 28, 1984, 1A.

Peters, D. (1981). "New Methods for Educating and Credentialing Professionals in Child Care," *Child Care Quarterly*, 10:3-8.

"A Place of 'Conversion' for Priests Who Abused Children," *The Washington Post*, January 2, 1993, A:1.

Post, R. (1989). "Social Foundations of Privacy," *California Law Review*, 77:957.

Presbyterian Church, U.S.A. (January 1991). *General Assembly of the Presbyterian Church U.S.A.: Policy and Procedures on Sexual Misconduct*, Louisville, KY: Author.

Prosser, W. (1960). "Privacy," *California Law Review*, 48:383.

"The Quality of Police Arrest Statistics," *Police Foundation Reports*, August 1984.

Rabb, J. and Rindfleisch, N. (1985). "A Study to Define and Assess Severity of Institutional Abuse/Neglect," *Child Abuse and Neglect*, 9:285-294.

"Recommended Voluntary Standards for Improving the Quality of Criminal History Record Information," *Federal Register*, February 13, 1991, 56(30): 5849-50.

Rice, M.; Quinsey, V.; and Harris, G. (1991). "Sexual Recidivism Among Child Molesters Released From a Maximum Security Psychiatric Institution," *Journal of Consulting and Clinical Psychology*, 59(3):381-386.

Rindfleisch, N. and Bean, G. (1988). "Willingness to Report Abuse and Neglect in Residential Facilities," *Child Abuse and Neglect*, 12:509-520.

Rindfleisch, N. and Rabb, J. (1984a). "Dilemmas in Planning for the Protection of Children and Youths in Residential Facilities," *Child Welfare*, 63:205-215.

Rindfleisch, N. and Rabb, J. (1984b). "How Much of a Problem is Resident Mistreatment in Child Welfare Institutions," *Child Abuse and Neglect*, 8:33-40.

Ritchie, J. (1993). "Legal Analysis: Collection of Juvenile Crime Records by the FBI," *ABA Juvenile and Child Welfare Law Reporter*, 11(12):190-91.

Rivas, R. (1992). "Access to Private Documents Under the Public Records Act," *Nova Law Review*, 16:1229.

Roberts, D.; Ryder, J.; and Wilson, T. (1987). *New Technologies in Criminal Justice: An Appraisal*, A Report to the Office of Technology Assessment, U.S. Congress, June 8, 1987, Sacramento, CA: SEARCH Group, Inc.

Robertson, D.W. (1992). "Negligent Liability for Crimes and Intentional Torts Committed by Others," *Tulane Law Review*, 67:135-82.

Rogers, C. and James, T. (1991). *Maltreatment in Child and Youth Care Settings: A Primer for Insurance Providers*, The Center for Child Protection and Family Support, Inc., Washington, DC.

Rollins, N. (1985). "Screening the Caretakers," *Compleat Lawyers*, 2:32.

Rosenblum, M. (1991). "Security vs. Privacy: An Emerging Employment Dilemma," *Employee Relations Law Journal*, 17(1):81-101.

Ross, A. and Hoeltke, G. (1985). "A Tool for Selecting Residential Child Care Workers: An Initial Report," *Child Welfare*, 64:46-54.

Russell, S. and Clifford, R. (1987). "Child Abuse and Neglect in North Carolina Day Care Programs," *Child Welfare*, 66:149-163.

Rutledge, D. (1992). *The Use of the Child Abuse and Neglect Central Register for Employment Screening Purposes*, Topeka, KS: Kansas Department of Social and Rehabilitation Services, Division of Youth and Adult Services, unpublished.

Sackett, P. et al (1989). "Integrity Testing for Personnel: An Update," *Personnel Psychology*, 42:491-529.

Sale, J. et al (1988). "Child Care and the Child Abuse Index: A Report from the California Children's Council," Washington, DC: U.S. Department of Education, Office of Educational Research and Improvement (ED 307956).

"Scandals Spark Clergy Screening Changes," *The Denver Post*, April 28, 1991, C:1.

"Schools Alert to Signs of Abuse," *Daily News* (Los Angeles), December 18, 1990, 1.

"Schools' Crime Record Checks Snare 30," *Fairfax Journal*, January 8, 1990, A:1.

Schreiber, M. (1980). "Employment Applications--What Massachusetts Employers Can and Cannot Ask," *Massachusetts Law Review*, 65:69.

"Scouts Honor," *The Washington Times*, May 20-24, 1991, special 5-part series.

"Screening for Sex Offenders in Volunteer Programs," *Child Protection Connection*, Vermont Child Protection Coalition, January 1985: 3.

"Screening School Bus Drivers," *Detroit News*, June 9, 1990, C:5.

SEARCH Group, Inc. (March 1990). *Availability of Criminal History Records: The Effect of an Open Records Policy*, Sacramento, CA: Author.

SEARCH Group, Inc. (July 1988a). *A Proposal for Establishing an Interstate Compact to Implement the Interstate Identification Index*, Sacramento, CA: Author.

SEARCH Group, Inc. (July 1988b). *Standards for the Security and Privacy of Criminal History Record Information*, Technical Report No. 13 (Revised), 3rd edition, Sacramento, CA: Author.

SEARCH Group, Inc. (May 1986). *Proposed National Policy for Utilizing the Interstate Identification Index for Access to Criminal History Records for Noncriminal Justice Purposes*, Sacramento, CA: Author.

SEARCH Group, Inc. (April 1984). *Liability for Mishandling Criminal Records: Summary of Legal Principles, Analysis of State Statutory Provisions, Review of Recent Court Decisions*, Sacramento, CA: Author.

SEARCH Group, Inc. (March 1983). *Non-Criminal Justice Agency Access to State and Local Criminal History Record Information*, Sacramento, CA: Author.

SEARCH Group, Inc. (December 1982). *Audit Manual for Criminal History Record Systems*, Sacramento, CA: Author.

SEARCH Group, Inc. (May 1982). *State Law and the Confidentiality of Juvenile Records*, Sacramento, CA: Author.

SEARCH Group, Inc. (November 1981). *Trends in State Security and Privacy Legislation*, Sacramento, CA: Author.

SEARCH Group, Inc. (May 1981). *The Interstate Exchange of Criminal History Records*, Sacramento, CA: Author.

SEARCH Group, Inc. (April 1981). *Sealing and Purging of Criminal History Record Information*, Technical Report No. 27, Sacramento, CA: Author.

Select Committee on Children, Youth, and Families (September 1991). *Child Abuse Prevention and Treatment in the 1990s: Keeping Old Promises, Meeting New Demands*, Hearings before the U.S. House of Representatives, 102nd Congress, Second Session, September 15, 1991.

Select Committee on Children, Youth, and Families (March 1987a). *Abused Children in America: Victims of Official Neglect*, A Report for the U.S. House of Representatives, 100th Congress, First Session.

Select Committee on Children, Youth, and Families (March 1987b). *Child Abuse and Neglect in America: The Problem and the Response*, Hearings before the U.S. House of Representatives, 100th Congress, First Session, March 3, 1987.

Select Committee on Children, Youth, and Families (September 1986). *Children in State Care: Ensuring Their Protection and Support*, Hearings before the U.S. House of Representatives, 99th Congress, Second Session, September 25, 1986.

Select Committee on Children Youth, and Families (July 1985). *Child Care: The Emerging Insurance Crisis*, Hearings before the U.S. House of Representatives, 99th Congress, First Session, July 18 and 30, 1985.

Seligson, M.; Genser, A.; Gannett, E.; and Gray, W. (1983). *School-Age Child Care: A Policy Report*, Wellesley College Center for Research on Women, Wellesley, MA.

"Sex Abuse Checks Breaking Down," *New Society*, July 31, 1987, 5.

"Sexual Abuse Case Settled by Church," *The Washington Post*, December 4, 1992, A:1.

"The Sexual Abuse Issue: How Can Child Care Providers Respond?" *Exchange*, August 1984, 20-24.

Shaughnessy, M. (1984). "Institutional Child Abuse," *Children and Youth Services Review*, 6:311-318.

Simon, L.; Sales, B.; Kaszniak; and Kahn, M. (1992). "Characteristics of Child Molesters: Implications for the Fixated-Regressed Dichotomy," *Journal of Interpersonal Violence*, 7(2):211-225.

Skaff, L. (1988). "Child Maltreatment Coordinating Committees for Effective Service Delivery," *Child Welfare*, 67:217-30.

Soler, M.; Shotton, A.; Bell, J.; Jameson, E.; Shauffer, C.; and Warboys, L. (1991). Representing the Child Client, New York, NY: Matthew Bender & Co., Inc.

Special Reports, Day Care Information Service, 15(9), April 14, 1986.

"Speed Up Crime Checks," *Times-Picayune*, March 11, 1991.

Splitt, D. (1988). "School Law," *Executive Educator*, 10:12.

Sprague, M. and Horowitz, R., (eds) (1991). *Liability in Child Welfare and Protection Work: Risk Management Strategies*, Washington, DC: ABA Center on Children and the Law.

Staley, C.; Ranck, E.; Perreault, J.; and Neugebauer, R. (1986). "Guidelines for Effective Staff Selection," *Exchange*, January 1986:22-25.

"States Probe Own Policies on Day Care," *Boston Globe*, November 25, 1984, 77.

Strouse, C. and Bailey, J. D. (1989). "Preventing Maltreatment of Children in Care: Management of Liability in Out-of-Home Child Care Settings Through Risk Assessment Protocols," in *Third National Roundtable on CPS Risk Assessment*, Washington, DC: American Public Welfare Association, 67-86.

Strouse, C. and Bailey, J. D. (1990). "Residential Child Care Facility's Self-Assessment/Risk Prevention Guide," in *Fourth National Roundtable on CPS Risk Assessment*, Washington, DC: American Public Welfare Association, 173-187.

Subcommittee on Children, Family, Drugs and Alcoholism (January 1989). *Act for Better Child Care Services of 1989*, Hearing before the Committee on Labor and Human Resources, U.S. Senate, 101st Congress, First Session on S.5.

Subcommittee on Civil and Constitutional Rights (October 1987). *Dissemination of FBI Arrest Records for Employment and Licensing Purposes,* Hearings before the Committee on the Judiciary, U.S. House of Representatives, 100th Congress, First Session, October 14 and 21, 1987.

Subcommittee on Civil and Constitutional Rights (July 1986). *Criminal Justice Information Improvement Act*, Hearings before the Committee on the Judiciary, U.S. House of Representatives, 99th Congress, Second Session on H.R. 2129, July 16, 1986.

Titus, R. and DeFrances, C. (1989). *Criminal Record Checks of Public School Employment Applicants*, Washington, DC: U.S. Department of Education, Office of Educational Research and Improvement (ED 311545).

Tobin, C. (1985). "Overhauling State Licensing Requirements: Making Quality Child Care a Reality." *Journal of Legislation,* 12:213.

Turkington, R. (1990). "Legacy of the Warren and Brandeis Article: the Emerging Unencumbered Constitutional Right to Informational Privacy." *Northern Illinois University Law Review*, 10:479.

United States Catholic Conference Pedophilia Statement, reprinted from Origins, February 18, 1988, 17:624.

U.S. Department of Health and Human Services (1990a). *Fact Sheet*, "National Practitioner Data Bank: General Public," Rockville, MD: Public Health Service, Health Resources and Services Administration.

U.S. Department of Health and Human Services (1990b). *Fact Sheet*, "National Practitioner Data Bank: Accuracy of Information," Rockville, MD: Public Health Service, Health Resources and Services Administration.

U.S. Department of Health and Human Services (1990c). "National Practitioner Data Bank: Background Information," Rockville, MD: Public Health Service, Health Resources and Services Administration.

U.S. Department of Health and Human Services (1985). *Model Child Care Standards Act - Guidance to States to Prevent Child Abuse in Day Care Facilities*, Washington, DC: Author.

U.S. Department of Health and Human Services (1984a). *Preventing Sexual Abuse in Day Care Programs* (draft report), Washington, DC: Office of Inspector General.

U.S. Department of Health and Human Services (1984b). *Recruitment and Selection of Staff: A Guide for Managers of Preschool and Child Care Programs*, Washington, DC: Administration for Children, Youth and Families.

U.S. Department of Justice (May 1986). *Employer Access to Sex Offense Criminal History Records: A Model Statute with Commentary and Appendix*, Washington, DC: Office of Justice Programs, Office for Victims of Crime, in cooperation with Victim/Witness Project of the ABA's Criminal Justice Section.

U.S. General Accounting Office (1992). *Child Abuse: Prevention Programs Need Greater Emphasis*, Report to the Chairman, Subcommittee on Oversight of Government Management, Committee on Governmental Affairs, U.S. Senate.

"Volunteer Charged in Molestations," *Los Angeles Times*, May 4, 1991, B:12.

YMCA of the USA (September 1985). *Recommended Guidelines for Prevention of Child Abuse*, Program Services Division, Chicago, IL: Author.

Wald, M. and Woolverton, M. (1990). "Risk Assessment: The Emperor's New Clothes?" *Child Welfare*, 69:483-511.

Washington State Institute for Public Policy (December 1992). *Findings from the Community Protection Research Project: A Chartbook*, 3rd edition, Olympia, WA: The Evergreen State College.

"Who Is Teaching Our Children?" *The News Chief*, Sept. 23, 1984, A:1.

Widom, C. (1992). "The Cycle of Violence," *National Institute of Justice: Research in Brief*, Washington, DC: U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, NCJ-136607.

Willer, B.; Hofferth, S.; Kisker, E.; Divine-Hawkins, P.; Farquhar, E.; and Glantz, F. (1991). *The Demand and Supply of Child Care in 1990*, Washington, DC: National Association for the Education of Young Children.

Wolff, D. (1986). *Child Sexual Abuse: What We Have Learned*, Big Brothers/Big Sisters of America, Philadelphia, PA: Author.

Wolff, D. (1982). *Child Sexual Abuse,* Big Brothers/Big Sisters of America, Philadelphia, PA: Author.

Woodmancy, D. (1989). "Law Enforcement System is Getting a Major Face-Lift," *Government Technology*, November 1989.

Zakariya, S. (1988). "How Can You Identify People Who Shouldn't Work With Kids," *The Executive Educator*, 10:17-21.

ELLEN MUGMON
5324 ELIOT'S OAK ROAD
COLUMBIA, MARYLAND 21044
(301) 596-5538

September 7, 1993

The Honorable Don Edwards, Chairman
Civil and Constitutional Rights Subcommittee
House Committee on the Judiciary
806 O'Neill House Office Building
Washington, D.C. 20515-6220

Dear Congressman Edwards:

The Subcommittee on Civil and Constitutional Rights held a hearing on H.R. 1237, the "National Child Protection Act," on July 16, 1993. I attended that hearing and appreciate the opportunity to submit written comments on this important child protection measure. I strongly support H.R. 1237 and commend you, Representative Schroeder, and the other sponsors for introducing it. However, I believe the following issues must be addressed if children are to be adequately protected by this legislation:

· The definitions of "child abuse crime" and "background check crime" are under-inclusive. There are other categories of crimes that "bear upon an individual's fitness to have responsibility for the safety and well-being of children." (Victims of Child Abuse Act of 1990) Moreover, many serious crimes, including sexual crimes, are often plea-bargained to lesser offenses such as assault and battery. In my view, therefore, comprehensive checks are absolutely necessary. Please see the attached relevant materials on SB 825 which was introduced during the 1993 General Assembly session in Maryland. Please note, in particular, the case summaries. In general, limiting the scope of the crimes makes criminal history record searches considerably less effective. It also contributes to time delays because it hampers efforts to automate the criminal background check process and because separating releasable information from non-releasable information is time consuming.

· Section 3, subparagraph (a) of the bill should be amended to include arrest as well as conviction information. According to the U.S. Department of Justice in 1986, "Many [extrafamilial child abusers] have previously been arrested for violent or exploitative acts against children - some a number of times. However, if they have not been convicted . . . laws deny their employers or potential employers access to their records." Consequently, "the vast majority of arrested child sex abusers are able to go from job to job with little fear that arrests in connect with previous employment will ever be discovered by future employers."

· Section 5, subparagraph (4) excludes the reasonable use of corporal punishment as a means of discipline from the definition of child abuse. This exclusion should be amended out of the bill for public policy reasons and because it is unnecessary. There is no state where the reasonable corporal punishment of children is a crime. Moreover, while it is evident that not all children who are corporally punished are abused, it is also evident that the corporal punishment of children is not a wise or safe practice or one, for that matter, that should be encouraged by the U.S. Congress implicitly or explicitly. Please see the attached letter on SB 688 for a further explanation of this issue.

· On Section 5, subparagraph (12), reference is made to a poverty exemption from the definition of negligent treatment. This exemption should be stricken. It is inconsistent with the Child Abuse Prevention and Treatment Act and the federal regulations and policies adopted pursuant to its passage. It is my understanding that HHS has notified certain states that have this exemption in their laws that it must be removed or the state will lose its eligibility for federal funds under the Act. You may wish to contact Madeline Nesse in the office of General Counsel of the Department of Health and Human Services for more information.

· During the hearing, the spokesman for the Boy Scouts of America commented that the "focus of this legislation should be employees who have an economic interest in their position" rather than volunteer organizations. However, according to Dr. Gene Abel, a national expert who studies child molesters, "[the Boy Scouts have] got a real problem on their hands . . . The Scout leader is not the only position that a sex offender can take, but it is an ideal one for a pedophile . . . All volunteer organizations are troubled . . . by this same issue. The volunteer organizations are just perfect for pedophiles." (See attached reprint of a *Washington Times* expose on the Boy Scouts of America and a transcript of a recent ABC Television interview with a Boy Scout official on this subject.) Unfortunately, in my opinion, the Boy Scouts of America have consistently chosen to minimize this serious problem, rather than adequately screen its leaders. In this regard, please note the cases in the attached materials in which child molesters with criminal records were able to become Boy Scout leaders and subsequently harm children because their records were not checked. Therefore, volunteer organizations, as well as other organizations that provide services to children should be included in this child protection measure.

In closing, thank you for considering my views. Would you please advise me of any actions that are taken as a result of my observations? If you have any questions, please do not hesitate to contact me.

Sincerely,

Ellen Mugmon

Ellen Mugmon

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
WILLIAM DONALD SCHAEFER
GOVERNOR

OFFICE FOR CHILDREN, YOUTH, AND FAMILIES

301 WEST PRESTON STREET, ROOM 1502
BALTIMORE, MARYLAND 21201
(301) 225-4160
TDD (301) 333-3098
FAX (301) 333-5248

NANCY S. GRASMICK, SPECIAL SECRETARY
CHILDREN, YOUTH, AND FAMILIES

March 2, 1993

The Honorable Walter M. Baker
Chairman, Judicial Proceedings Committee
300 James Senate Office Building
Annapolis, Maryland 21401-1991

Dear Senator Baker and members of the Committee:

The Governor's Council on Child Abuse and Neglect strongly supports SB 825, "Criminal Background Investigations - Child Care Facilities," which strengthens this important child protection and anti-crime measure by expanding conviction information provided to government agencies and private employers. It has become clear to the Council that the present list of offenses in this statute is under-inclusive, especially in view of the fact that there are other categories of crimes which "bear upon an individual's fitness to have responsibility for the safety and well-being of children," (Victims of Child Abuse Act of 1990) and the law does not require that a positive background check result in disqualification.

Consequently, there are individuals whose criminal histories indicate that they pose a danger to children who cannot be deterred from, or identified after they have sought or obtained positions of public trust which can give them access to many vulnerable children over long periods of time. Nor can they be penalized for lying about their criminal histories. (See attached case summaries). We also support provisions in SB 825 which establish penalties for violations of the confidentiality of criminal history information and for the failure to require criminal background investigations by those mandated to do so.

In 1985, when the Criminal Background Investigations law was first considered by the General Assembly, the Governor's Task Force on Child Abuse and Neglect, which drafted this child protection measure, limited the list of offenses primarily because the 1985 proposal would have precluded the hiring of those convicted of the specified crimes. In 1986, the year which saw the passage of this legislation, the Task Force took an alternative approach, vesting the decision as to whether or not to hire or license in the hands of the employers or licensing agencies on the presumption that they would act in the best interests of children.

The Task Force also mandated criminal background checks based on fingerprinting rather than name and date of birth checks, not only because the FBI requires fingerprint-based checks (Fingerprints are now required for state checks as

well.), but because pedophiles and other aberrant adults "have been known to employ aliases and falsified documents in their attempts to slip through screening procedures." (See "Is There a Pedophile on Your Payroll?" by Richard Titus and Carol DeFrances, National Institute of Justice, 1990).

Moreover, there are many precedents in Maryland and other jurisdictions for performing comprehensive criminal background checks. Individuals in approximately 2,000 organizations in Maryland are subject to comprehensive criminal history checks. Only child care workers in Maryland undergo a limited check with regard to specifically listed offenses. Ironically, all public employers and certain public licensing agencies, as well as certain private organizations have for many years been authorized by COMAR regulations to receive full Maryland conviction data. Furthermore, the Department of Juvenile Services requested legislation which was enacted in 1991 which gives DJS the ability to obtain full conviction information from the FBI because this statute did not prevent the hiring of inappropriate personnel.

As of 1992, the last year for which a summary of this type of legislation was prepared, 49 states have passed legislation regarding criminal background checks on child care workers. The great majority require out-of-state checks in recognition that this is a mobile society and that individuals can reside in one state and commit crimes in another. Maryland, for example, is a small state which borders on five jurisdictions.

Most states also detail the kinds of criminal histories that either must be examined and/or prohibit employment. These range from convictions for any crime, except a minor traffic offense, (Maryland criminal history information does not include traffic violations) to convictions in special classes of crimes, such as crimes against persons, and drug offenses. Some states also include admissions or findings of guilt regardless of convictions, as well as arrest records. Moreover, Congress passed the Victims of Child Abuse Act of 1990, which requires that employees in federal agencies and facilities who provide child care services undergo a comprehensive national criminal history background check based on fingerprints. Under this law, some types of convictions prohibit employment, and all others may be considered in the decision making process.

Even with the limited checks we have in Maryland, 156 persons in 1991, and 141 persons in 1992, with histories of murder, child abuse, rape, kidnaping, as well as sexual and drug offenses were identified because of this law. Of those, 35 in 1991, and 39 in 1992 of those were picked up by the FBI check. It should be noted that these numbers do not include individuals who have been identified under DJS's separate statute. These statistics, however, cannot determine how many individuals have been deterred by this screening measure from applying for positions of public trust with regard to other people's children. Nor can statistics show all those who would not have acknowledged their criminal histories in the absence of the law. This deterrent effect is present, no matter what the time frame for the return of the check, since the application process includes the completion of a sworn statement. Thus, those who fail to disclose convictions or pending charges are guilty of perjury and can be, and have been, successfully prosecuted. In any case, applicants and licensees can begin work before the checks are returned.

Please note that the passage of this bill will decrease, not increase processing time because CJIS staff will not have to take the time to separate out certain convictions from others, as they are now doing. It will also decrease processing time because it allows for the automation of certain procedures.

Nor does this legislation require anything more of child care workers currently covered in the statute. Decision makers would only receive additional essential information which would enable them to more effectively protect children. This legislation takes steps to streamline the system and further protect children, goals which those who provide services to children say they want to see accomplished.

In sum, we agree with the conclusions of Howard Davidson, Director of the American Bar Association's Center on Child Advocacy and Protection "that criminal record screening is an important . . . weapon in the arsenal which is available to the government and private employer to help protect children from maltreatment in out-of-home care. A mandatory screening law suggests that as a public policy, people whose backgrounds would render them clearly inappropriate to be placed in positions of trust and authority over children will not be tolerated in the child care system. Coupled with an effective pre-employment screening interview and scrupulous background check of references, the well publicized routine of a criminal record check becomes a device that should dissuade many pedophiles or other disturbed people from entering into a child care or youth services position." We therefore urge the Committee to give SB 825 a favorable report.

Thank you for considering our views.

Sincerely,

Ellen Mugmon

Ellen Mugmon, Chairman
Legislative Committee

FACT SHEET
CRIMINAL BACKGROUND INVESTIGATIONS - CHILD CARE FACILITIES
SB 825
SUPPORT
Prepared by Ellen Mugmon
for the Governor's Council on Child Abuse and Neglect

Q. Why does the Criminal Background Check law list only ten kinds of crimes? (Three additional categories were added during the 1991 session.)

A. The original 1985 version of the bill would have prohibited people with specific criminal convictions from working in child-related jobs.

Individuals in approximately 2,000 private organizations in Maryland are subject to comprehensive criminal history checks. Only child care workers undergo a limited check with regard to specifically listed offenses.

Q. Why does the law need to be changed to include other crimes?

A. There are other categories of crimes which "bear upon an individual's fitness to have responsibility for the safety and well being of children," (Victims of Child Abuse Act of 1990) and the statute does not require that a positive background check result in disqualification.

Q. Are criminal background checks constitutional?

A. "You don't have the right of privacy with judicial proceedings of public record." (Barbara Mello, Staff Attorney for the ACLU of Maryland in 1986)

The child's basic right to protection and safety overrides the adult's desire to obscure his criminal record from scrutiny.

As of 1992, the federal government and 49 states, including Maryland, have enacted legislation regarding criminal background checks and child care workers, recognizing that employers, licensing agencies, and parents have a reasonable right to know whether or not people to whom children are entrusted on a daily basis have criminal histories which indicate they pose a danger to children.

Q. How can SB 825 help to further protect children in Maryland?

A. The attached summary of cases describes children who would have been protected had the criminal histories of their caretakers been known and demonstrates why the list of offenses in current law is under-inclusive and why employers and licensing agencies presently do not have sufficient ability to exercise necessary caution when selecting individuals for position of public trust with regard to other people's children.

CASE SUMMARIES - SB 825 - SUPPORT
Prepared by Ellen Mugmon
for the
Governor's Council on Child Abuse and Neglect

In 1989, Linda Johnson was arrested and later convicted in Washington, D.C. for murdering a nine month old baby under her care. She had slammed the baby's head against a wall numerous times because the child would not stop crying. Police also discovered, after sending her fingerprints to the FBI, that she had a long arrest and conviction record in Louisiana, which included forgery, and burglary, as well as arrests for criminal neglect and armed robbery. (The Washington Post, "Ex-nanny Had Record Before Slaying," February 2, 1989) None of her prior convictions in Louisiana would have triggered a positive check under the present statute.

In 1988, the Juvenile Services Agency unknowingly hired a convicted felon as a supervisor at the Boy's Village in Prince George's County. During his employment there he helped four boys to escape from the facility. He had spent more than ten years in prison for robbery, burglary, and receiving stolen goods. JSA officials were unaware of his past criminal history, even though he had undergone a criminal records check because the crimes for which he was convicted are not included in the statute. (The Sun, "Agency Screening Can't Spot Felons During Hiring," February 26, 1989). While DJS can now screen this individual out, because of the passage of a law in 1991 to remedy this situation, other child-serving organizations cannot.

In 1989, New York attorney Joel Steinberg, was convicted of first degree manslaughter in the notorious beating death of his illegally adopted daughter, Lisa. Incredibly, Steinberg and others like him can pass a Maryland criminal background check.

In January 1988, Martha Guba, a family day care provider in Virginia, was convicted of felony child neglect. She had given a six month old baby an antidepressant to stop him from crying. The baby died as a result. But it was not her first crime. Police found, after sending her fingerprints to the FBI, that under six different aliases, she had been convicted in two other states of larceny, vagrancy, disorderly conduct, and grand theft, as well as the neglect of her own infant children. (Washington Post, "Girl's Death Highlights Need for Home Day Care Regulation," January 17, 1988). None of these convictions, even the ones for child neglect, would have engendered a positive criminal background check in our state.

A cult leader and several of his followers were indicted for conspiracy to deny the civil rights of 29 children who they allegedly held in involuntary servitude in Oregon and California. Their alleged acts culminated in the beating death of an eight year old girl. (The Sun, "Eight in Group Accused of Enslaving Children," February 9, 1991). Again, there is no reference to this type of crime in our law.

Diane Jones was convicted in Baltimore in July, 1992, of battery for assaulting two disabled patients in a Catonsville nursing home. Jones was "forbidden to work with

senior citizens or children" by the court. Nevertheless, she can pass a criminal background investigation in this state for child care workers, since battery is not one of the listed crimes. (The Evening Sun, "Nurse's Aid Jailed for Assaults," July 28, 1992).

In 1969, George Slater was charged in the District of Columbia with first degree burglary, sodomy, rape, and robbery. He pled guilty to the burglary count, and the remaining charges were dismissed. In 1970, in Montgomery County, Slater was charged with assault with intent to rape, assault and battery, robbery, and larceny. He pled guilty to larceny. All other charges were dismissed. Mr. Slater could pass Maryland's criminal background check law and work with children. (See Carolyn W. Cramer v. Housing Opportunities Commission of Montgomery County, 1985).

In February of last year, in San Francisco, a television station exposed a meeting of a pedophile group, the North American Man Boy Love Association, which had been holding its meetings at a local library. Its spokesman, Alan Davis, told reporters that no one in their organization had ever been arrested. But it was later discovered that his real name was Nicholas Alan Palmer, and that he had been previously convicted of soliciting sex from a nine-year-old boy. (See Washington Times, "Pedophile Group Shakes Up City," February 10, 1992). Mr. Palmer is an example of why criminal background checks based on fingerprints are necessary.

A Baltimore County mother who left her two young children home alone was convicted of reckless endangerment in connection with their deaths. (The Sun, "Mother Admits Reckless Endangerment," March 20, 1992). Since reckless endangerment is not one of the list of crimes, her conviction would not be picked up under present law.

Dennis Miller, a Virginia elementary school teacher, was convicted of assault and battery for fondling a student. Local school systems in Maryland would never find out about his conviction in Virginia should he apply in Maryland for a teaching job. (The Washington Post, "Manassas Teacher Convicted of Fondling Student," July 3, 1992).

An 18 year old Washington man was convicted of assault with a dangerous weapon in the severe scalding of his five month old daughter. (The Washington Post, "Man Guilty in Scalding," January 27, 1993). His conviction would not engender a positive check in Maryland.

A 33 year old Westminster man who kicked his five year old son down concrete steps, severely injuring him, could also pass a criminal background check in this state because he agreed to plead guilty to battery instead of child abuse.

A twenty year old Fairfax County babysitter, Jennifer Salas, was convicted of involuntary manslaughter of a seven-month-old Virginia boy. Salas had thrown the baby into a playpen, cracking his skull. (The Washington Post, "A Nightmare Come True," June 13, 1992). Ms. Salas' conviction would be missed under current law.

A Howard County camp employee was convicted of molesting several children under his care. He had been previously convicted in Virginia of assault and battery as a result of a sexual child abuse complaint. His prior out-of-state convictions would not be picked up under present law.

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
WILLIAM DONALD SCHAEFER
GOVERNOR

OFFICE FOR CHILDREN, YOUTH, AND FAMILIES

301 WEST PRESTON STREET, ROOM 1502
BALTIMORE, MARYLAND 21201
(301) 225-4160
TDD (301) 333-3098
FAX (301) 333-5248

NANCY S. GRASMICK, SPECIAL SECRETARY
CHILDREN, YOUTH, AND FAMILIES

March 2, 1993

The Honorable Walter M. Baker
Chairman, Judicial Proceedings Committee
301 Senate Office Building
Annapolis, Maryland 21401-1991

Dear Senator Baker and members of the Committee:

The Governor's Council on Child Abuse and Neglect strongly opposes SB 688, "Child Abuse and Neglect - Corporal Punishment," which excludes the "reasonable use of corporal punishment as a means of discipline from the definitions of child abuse and neglect." We oppose this bill for the following reasons:

1. Current law already permits parents to corporally punish their children, and to physically injure them when doing so. Only physical injuries which occur as a result of cruel or inhumane treatment or malicious acts "that indicate that the child's health or welfare is harmed or threatened" are prohibited in Article 27, Section 35 A, and only those physical injuries of a child that "indicate that the child's health or welfare is significantly harmed or at risk of being physically harmed" are considered abuse in the Family Law Article. Thus, in our view, these statutes create a high threshold in defining the physical abuse of children. Please note that many other states' statutes define physical abuse as non-accidental injuries for the purpose of reporting with no other caveats.

2. Hence, the right to corporally discipline one's child in Maryland has been and continues to be a defense to what would otherwise be an assault and battery. It is further justified under the label of "Domestic Authority." According to the Court of Special Appeals, in Anderson v. State, this privilege remains with regard to children "although other and earlier exercises of domestic authority involving relationships such a master-apprentice and husband-wife have been relegated to the dustbin of history."

3. Notwithstanding the acceptance of physical punishment of children in our laws, research on this subject shows that the approval of corporal punishment of children has "important implications for the understanding and prevention of the physical abuse of children . . . . Although most physical punishment does not turn into physical abuse, most physical abuse begins as ordinary physical punishment . . . .

Moreover, being the subject of physical punishment trains future parents in the use of violence" rather than in alternative disciplinary techniques which are far more effective. Studies also "show that the more physical punishment that parents experience as children, the higher the proportion who engaged in abusive violence toward their own children and their own spouses, and the more parents used ordinary physical punishment, the greater the percentage who were worried that they might get carried away to the point of child abuse." ("Physical Punishment and Physical Abuse of American Children: Incidence Rates by Age, Gender, and Occupational Class," in Physical Violence in American Families by Barbara Wauchope and Murray Straus, 1990).

4. Furthermore, public opinion is consistent with research findings. According to the National Committee for the Prevention of Child Abuse 1992 public opinion survey, the vast majority of respondents felt that "physical punishment is detrimental to a child's well-being, . . . and only 20% believed that physical punishment never leads to injury. Clearly, the physical punishment of children is a significant part" of the explanation for the high rate of physical abuse of American children (Wauchope and Straus).

While it is evident that not all children who are spanked are abused, it is also evident that the corporal punishment of children is not a wise or safe practice, or one, for that matter, that should be encouraged or touted by the General Assembly implicitly or explicitly. In any case, parents who discipline their children in this manner are more than sufficiently protected under present laws designed to protect children. Consequently, there is no need for this bill. In essence, it is redundant. We therefore urge the Committee to give SB 688 an unfavorable report.

Sincerely,

Ellen Mugmon

Ellen Mugmon, Chairman
Legislative Committee

Scouting's sex abuse trail leads to 50 states

By Patrice Bove
THE WASHINGTON TIMES

For parents, the local Boy Scout troop is a safe place to send the kids. For child molesters, it's an ideal place to meet them.

The result: on an average of more than once a week for the past two decades, a Cub Scout, Boy Scout or Explorer has reported being sexually abused by a Scout leader.

An investigation by The Washington Times shows that at least 1,151 Scouts have reported being abused by their leaders over the past 19 years, making sex abuse more common in Scouting than accidental deaths and serious injuries.

In that time, at least 416 men have been arrested or banned from Scouting for molesting the boys in their care — and experts say the real number of abusers and victims is probably several times higher.

Those are among the findings of an investigation that turned up abuse by Scout leaders in all 50 states and the District of Columbia.

"I was naive to think the Boy Scouts was such a safe place," said the mother of a Maryland boy abused by his Scoutmaster. "I thought the Boy Scouts was a sanctuary."

In fact, the examination of sex abuse in Scouting reveals a long-standing paradox for the nation's most revered youth group: for 80 years the Boy Scouts of America have given boys some of the best experiences of their lives, but for 80 years some men have used the Boy Scouts of America to have sexual relations with those boys.

"That's been an issue since the Boy Scouts began," said James Tarr, the nation's Chief Scout Executive from 1979 through 1984.

The Scouts say the number of abuse cases is low considering all their volunteers. They have also taken steps to fight the problem.

The Times examined the problem by reviewing internal Scout records and tens of thousands of pages of court records from around the country, including confessions of molesters and testimony from children; by interviewing molesters, families of victims, Scout leaders, sex abuse experts and lawyers; and by analyzing the cases on a computer database.

Among the findings:

• Each year from 1971 through 1989, an average of at least 21 male Scout leaders and camp workers were banned from Scouting or arrested for sexual misconduct with Cub Scouts, Boy Scouts and Explorers. The acts ranged from proposing sex acts and fondling boys in their sleep to performing oral sex and intercourse with the children.

• During that time an average of at least 60 Scouts were reported abused each year, with some of them abused dozens of times before telling anyone. Experts and Scout officials say those figures are probably a fraction of all the abusers and victims, since most child sexual abuse isn't reported and most abusers aren't caught.

"I would guess that the number of actual cases is even far greater than that," said Anne Cohn, director of the

see ABUSE, page 2

ABOUT THIS REPRINT

Every day, communities all over the country are somehow touched by the good works of the Boy Scouts of America. And every day, children in communities all over the country go through the horror of sex abuse. For many people, the Scouts are supposed to be a haven from such horrors.

From May 20-24, 1991, The Washington Times ran a five-part series about sex abuse in the Boy Scouts of America. The series, called "Scouts Honor," showed how child molesters use the country's most popular youth organization to have sex with children.

This project began with a lawsuit by a Virginia boy who had been molested by his Scout leader. It grew into a six-month investigation that uncovered reports of abuse by Scout leaders in every state and the District of Columbia. At a time when the Boy Scouts of America were saying they had two to 10 reports of sex abuse each year, this project found that over the past 19 years at least 416 Scout leaders have been accused of molesting more than 1,000 Scouts.

The series includes 34 stories, plus graphics, that show why Scouting is so attractive to molesters, how they seduce boys, how the abuse affects children, and how the institution has responded to the problem. There are tales about the boy who killed himself after being abused, the man who may be the most prolific molester in scouting, the Scout leaders who tried to keep the cases quiet and the experts who developed a program to curb the abuse.

ABUSE

From page 1

National Committee for the Prevention of Child Abuse

● Scout officials tried to hide the sex abuse problem from the public and press, and sometimes from parents and police. National Scout officials have given the news media incorrect information about the extent of abuse in Scouting, and in a few cases local Scout officials may have violated child abuse reporting laws by not reporting suspected abuse to authorities.

"The attitude was more one of sweeping it under the rug and hoping it goes away," said Edward Allinson, a Scout leader in Prince George's County.

● Camping trips — in many people's eyes the essence of Scouting — are the most popular places for Scout leaders to have sexual relations with boys.

● Over the past five years the Boy Scouts of America and local Scout councils have agreed to pay at least $15 million to settle lawsuits brought by families of abused Scouts.

● The molesters often joined troops and molested boys even after being caught. While the vast majority of cases do not state whether the offenders had criminal records, at least 21 of the men did — mostly for sex offenses with children. Others had left troops as youth groups under suspicion but weren't charged.

● Officials at national Scout headquarters rejected or ignored nuggets hints, starting around 1960, to improve their system for keeping molesters out of Scouting and to educate Scouts about abuse.

● Spurred by increasing public awareness of sex abuse and by lawsuits from abused Scouts, the Boy Scouts have developed a sex abuse education program that is considered one of the best in the nation.

Over the next five days The Washington Times will look at why Scouting is so attractive to pedophiles, how men use Scouting to have sexual relations with boys, how it affects the children and how the Boy Scouts have responded.

"They've got a real problem on their hands," said Atlanta psychiatrist Dr. Gene Abel, who has extensively studied child molesters. "The Scout leader is not the only position that a sex offender can take, but it is an ideal one for a pedophile."

In many ways, the problem of child sex abuse in Scouting reflects the problem of sex abuse in America, especially in volunteer groups that serve children.

> **"My message to parents is to care, truly care by being involved in all aspects of their children's lives and people with my problem will never have an opportunity to abuse their children."**
>
> Convicted child molester and former Scoutmaster Carlton Beerbander of Virginia.

"All volunteer organizations are troubled by this same issue," Dr. Abel said. "The volunteer organizations are just perfect for pedophiles, in the sense that they are just the ideal situation if they can get to a large number of kids, to kind of check out which ones might be the easiest victims."

The molesters in Scouting come from all walks of life: they're priests and policemen, teachers and truck drivers, laborers and lawyers.

Rather than being the dangerous strangers that parents warn their

> **Over the past several years the Scouts have created an extensive program to teach Scout staffers, volunteers, parents and children about sex abuse.**

children about, they are usually upstanding members of their communities and well-liked by children and parents. Rather than setting out to hurt boys, many profess to love them and describe the sexual relationships as natural outgrowths of their affection.

"I felt I could pull myself down to their level to talk to them," said John Fitzgerald, a former Scout leader now on a New Jersey prison, serving time for molesting Scouts. "I could almost understand what they would feel, what they would think."

Dozens of lawsuits in the past several years, filed by the families of boys who were molested by Scout leaders, claim Scout officials knew such men were drawn to Scouting but did little to educate boys about sex abuse or check volunteers' backgrounds.

The Scouts say sex abuse has not been a statistically significant problem in their organization, considering they have more than 1 million adult volunteers and more than 4 million Scouts.

However, more than half the volunteers do not deal directly with Scouts. Most of these play a sort of administrative role, such as working on the committees and councils that oversee troops. About 60 percent of the volunteers are women.

The vast majority of abuse in Scouting, on the other hand, is committed by a narrow group of volunteers: male Scoutmasters and assistant Scoutmasters, who number about 147,000.

The victims also are usually from one group: Boy Scouts, who range in age from 11 to 17 and numbered 959,000 at the end of last year.

Dr. Walter Meninger, former chairman of the Scouts' health and safety committee, tried to put the problem in perspective in a 1987 deposition involving a lawsuit by a Florida boy molested by his Scout master.

"There is a greater threat to Scouts of drowning and loss of life from accidents than there is from actual abuse by a Scoutmaster," he said.

Scout statistics show the opposite. While an average of 60 Scouts have reported being sexually abused each year for the past 10 years, in the same span an average of 12 Scouts died each year during Scout activities. The Scouts also report that each year about 30 Scouts suffer "serious injuries," defined as life-threatening or requiring a 24-hour hospital stay.

Child abuse experts say it is impossible to determine whether the rate of abuse in Scouting is higher than in the rest of the country because sex abuse reporting is so hazardous and unreliable.

Over the past several years the Scouts have created an extensive program to teach Scout staffers, volunteers, parents and children about sex abuse. With help from some of the top sex abuse experts in the country, the Scouts have put out articles, pamphlets and videos that tell children how to resist abuse, tell parents how to protect their children, and tell Scout leaders how to handle abuse allegations in a troop.

The Scouts also have changed or reinforced rules to reduce opportunities for molesters, and to catch them quickly.

SCOUTING PRIMER

Some important information about the organization and make-up of the Boy Scouts of America.

The Boy Scouts of America

Incorporated in 1910 in Washington, D.C., by William D. Boyce, publisher of Chicago Saturday Globe and the Chicago Ledger. Congress gave the Boy Scouts a federal charter in 1916, which essentially prevented other groups from using the Boy Scouts of America name.

Lord Robert Baden-Powell started the Scouting movement in England in 1908. He visited the United States to help organize the Scouts here.

Cub Scouts

Must be at least 8 or have completed first grade, through age 11. Cubs belong to dens, usually six to 10 boys each, which are part of Cub packs. The den leaders are usually women. Very few of the sex abuse cases reported at the Boy Scouts of America over the past 10 years involve Cub Scouts.

At the end of 1989, Cub Scouts had 52,875 packs.

Boy Scouts

Must be at least 11 to have completed fifth grade, through age 17. Boy Scouts belong to troops. They often go on camping trips, and are led by Scout masters, usually men. The vast majority of sex abuse cases reported to the Boy Scouts over the past 10 years involve Boy Scouts.

At the end of 1989, there were 46,830 troops.

Other councils

There are other types of scouts, such as Tiger Cubs, ages 7 and 8, and Explorers, who can be ages 14 to 21 and can be male or female. Very few sex abuse cases involve these scouts.

Sponsors

Each troop of pack is sponsored by an organization, such as a church or PTA. The Boy Scouts of America issue a charter to the organization to sponsor a troop. The troop is run by a troop committee, made up of local volunteers.

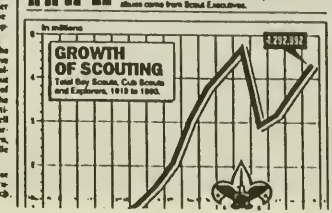
Leadership

The sponsor and troop committee choose leaders for the troop. National headquarters can refuse to register a leader if it decides he or she does not meet the moral standards of the Boy Scouts.

Scout councils

The councils, run by professional Scouters, oversee Scouting programs in a designated area, usually consisting of at least several counties. There are about 400 councils around the country. Each council is headed by a Scout Executive.

The Scout Executive is supposed to report unit leaders to national headquarters. Most of the letters written to national headquarters about reported sex abuse come from Scout Executives.



Ben H. Love, Chief Scout Executive, Boy Scouts of America

ORGANIZATION

National Headquarters, Irving, Texas

Sets the rules and the basic programs for Scouting, issues charters to local groups at sponsor troops. National maintains a registration list of every Scout leader in the country, and a confidential file on every adult banned from Scouting. National can refuse to register an adult if it believes he is unfit, and can revoke a sponsor's charter for not following Scout rules.

Regional offices

Run by professional Scouters, oversee the councils. The country is divided into six regions.

Scout councils

Run by professional Scouters, they oversee the troops in a designated area. The councils are supposed to tell national headquarters about leaders who are removed for improper conduct.

Unit committees

Made up of volunteers who run the troops on behalf of the chartering organizations. They choose leaders and remove unfit leaders.

Chartering organizations

Priests, Big Brothers guilty of abuse, too

The problem of child sex abuse has plagued several of America's most respected institutions. Take, for instance, the Big Brothers and the Catholic Church.

From 1983 to June 1986, the Big Brothers/Big Sisters of America got more than 100 reports of sex abuse, according to a report to the 1986 national Big Brothers conference in Florida. Donald Wolff, the lawyer who wrote the report, said most of those cases involved a Big Brother or a staff member abusing a boy, although a few cases involved family members rather than volunteers.

"The overwhelming area of concern is the Big Brother-Little Brother match," the report said.

There are also many reports of sexual activity between Catholic priests and boys. Dr. Jay Feierman, a psychiatrist who treats pedophiliac priests at a Church facility in New Mexico, said that in 15 years he has treated 300 to 500 priests. He estimates several hundred more have been treated at other facilities.

In 1985, several priests wrote a confidential report for Church leaders, entitled, "The Problem of Sexual Molestation by Roman Catholic Clergy" proposing a comprehensive plan to deal with the problem. The report said sex abuse cases "place the Church in the posture of facing extremely serious financial consequences as well as significant injury to its image."

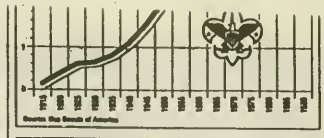
It may be impossible, however, to compare the extent of abuse in those organizations with the Boy Scouts, because their reporting systems are different and their files have not been made public.

But that has brought its own troubles. Some groups that sponsor troops say the changes unfairly put more responsibility on them to check the backgrounds of volunteers and leave them more vulnerable to liability suits. The national PTA said last month it cannot "encourage nor prohibit sponsorship of Scout units by local PTAs" because of disagreements with the Scouts over leadership selection and insurance coverage for lawsuits. The PTA in Montana has stopped sponsoring troops over of those issues.

The Scouts say their liability insurance covers troop sponsors.

Whatever the Scouts do, experts say, they cannot completely stop abuse, because troops will always draw pedophiles. Former Scoutmaster Carlton Buttenbender, serving 30 years in a Virginia prison for molesting boys in his Reston troop, was asked how parents can protect their children from men like him.

In a letter to The Washington Times, Mr Buttenbender wrote, "My message to parents is to care, truly care by being involved in all aspects of their children's lives and people with my problem will never have an opportunity to abuse their children."

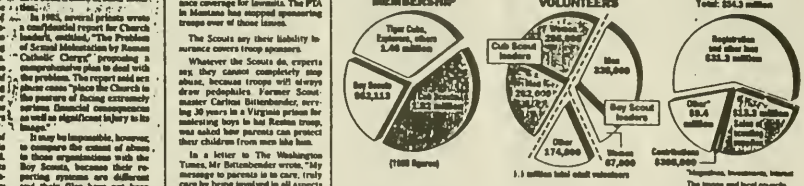


Groups such as churches and PTAs find sponsor troops. They provide meeting places and help raise money.

Individual Scout units

Buy Scout troops and Cub Scout packs.

1986 figures



The troops and local councils raise their own money through fund-raising events, contributions from United Way campaigns, and other donations.

How The Times found facts of Scout abuse

The Washington Times' investigation began two years ago in Fairfax County with a lawsuit filed by a Reston boy.

It ended last week with a final phone call to a former child abuser in Montgomery County.

To prepare the series, called "Scouts Honor," on sex abuse in the Boy Scouts of America, The Washington Times studied personnel records from the Boy Scouts, reviewed court records from more than 20 states, collected more than 1,000 newspaper articles about abused Scouts, talked to more than 200 people, and created a computer database to keep track of it all.

Reporter Patrick Boyle began gathering information about two years ago and worked nearly full time on the project for the past six months.

He began by copying and reading thousands of pages of Boy Scout records submitted in a Fairfax County court as a lawsuit called "Infant C. versus the Boy Scouts of America."

The trial for that case, involving a Reston youth molested by former Scoutmaster Carlton Buttenbender, ended in 1989. But the Scout records, called the "confidential files," gave details on 231 leaders banned from Scouting for sexual misconduct from 1975 through 1984.

Those records were the cornerstone of the project – they include police reports, letters from abusers to victims and handwritten statements by boys who were abused. Some key information, like the names of molesters and victims, was deleted. Mr Boyle gave each case a number.

These files revealed some trends the common use of campouts as settings for sexual abuse, for instance, and the concern that Scout officials had about keeping sex abuse reports out of the media.

Lawsuits against the Scouts by families of molested boys constituted the second major source. The reporter found 50 suits from around the country.

One of the lawsuits, in Florida, netted the third major source. It but from the Boy Scouts of more than 350 men banned for sexual misconduct from 1971 to 1986. The list summarized each case by year, state, and a one-sentence description of the incident. Many of the cases were the same as those in the confidential files from the Infant C lawsuit, but this but included dozens of other cases before 1975 and after 1984.

Finally, database editor Elizabeth Marchak conducted computer searches for newspaper stories involving sex abuse and the Boy Scouts. The searches netted more than 1,000 articles from papers around the country. Many of the stories, of course, were about the same cases.

Using the stories and lawsuits, the reporter found molesters, families of victims, and Scout officials and lawyers involved in abuse cases. He got trial transcripts, attended the criminal trial of one abuser, found the family of a Scout who committed suicide after being abused, interviewed a molester in jail and another in a lawyer's office. The research took him to various towns in Maryland and Virginia, and to New Jersey, New York, Florida and Texas.

The most crucial task was marching up stories, lawsuits and confidential files that involved the same case. To come up with a credible summary of the number of cases, The Times had to make sure no case was counted twice. This was difficult because the Scouts' confidential files did not include names of molesters.

Ms. Marchak and computer programmers for The Times created something called a "relational database," using 4th Dimension software on a Macintosh computer. Each Scout leader accused of sex abuse had a separate file in the computer. Each file included whatever key information was available, such as the name of the abuser, the dates of abuse, the Scout troop, the state and descriptions of the abuse.

When The Times got a new abuse case, Mr Boyle and Ms. Marchak used that key information to see if they already had it in the database. For instance, if they got a story about an abuser in Maryland, they had the computer list all Maryland cases. They then searched those cases for other facts to see if any of them matched the new case.

The database also let them analyze the files: it could list all cases where the abusers were married, where the troop sponsors were churches, or where an abuser used a first aid demonstration as an excuse to touch boys' genitals.

About 30 cases were eliminated from the study because they did not meet the criteria for this project, which focused on male Scout leaders abusing Scouts. Most of those cases were eliminated because it was not clear that the victims were Scouts.

The 416 cases counted by The Times span from April 1971 through July 1998, meaning that the study covers 19 years and three months. This probably is an undercount of the cases reported to the Scouts, because The Times had access to Scout records only from 1971 through 1985, relying on news reports and lawsuits for the subsequent years.

The confidential files show that few cases are publicized, and the Scout official in charge of the files said he believes that in the past few years he has received an increasing number of sex abuse reports.

There have been abuse cases reported in the Girl Scouts, but The Times has no information about the extent of the problem.

SWEEPING IT UNDER THE RUG

Over the past several years, the Boy Scouts of America have issued several statements about sex abuse in Scouting that incorrectly portrayed the extent of the problem:

"Of the one and a quarter million adults involved in Boy Scouts each year, eight, 10 are involved in something of this nature."

– Barclay Bolles, national news editor for the Boy Scouts of America, in Pennsylvania newspaper on June 8, 1984. That year the Boy Scouts had 36 men for sexual misconduct with children. Mr. Bolles said he was referring to cases he had heard about.

"The number of reported incidents within the Boy Scouts of America over the years is statistically smaller than society."

– A Boy Scouts of America "white paper" about sex abuse, put out since 1987. Boy Scout officials say they don't have statistics to make that comparison, but they believe it's true.

"Ted Accas, spokesman for the Boy Scouts national headquarters in Irving, Texas, said at least 100 official accusations of sexual assault have been registered in the past decade nationwide."

– The Associated Press, Oct. 17, 1986. During that decade there were about 230 accusations.

The Washington Times

SCOUTS HONOR

25 years of abuse kept molester moving

By Patrick Boyle
THE WASHINGTON TIMES

As Danny remembers it, the first thing Thomas Hacker did when he walked into the tent that night was turn around and zip it shut.

"He just, you know, tipped the outside door so you can't see inside the tent at all," Danny said. "It was a night and we were supposed to be going to bed, you know, for the night, and he came in and he was talking to us and I was laying on my stomach on my sleeping bag."

It was the summer of 1983, and Danny's boy Scout troop was spending a weekend at Camp Falcon in Illinois. Hacker, the Scoutmaster who arranged the trip, was 48. Danny was 11.

This is how the boy, whose name has been changed for this story, told his tale from a witness stand four years later.

"He sat down next to me and started to give me a back rub and he was talking to me about Scouts. He was saying that I was, like, good material for Scouts. I could learn a lot of things.

"As he was rubbing my back, he started to bring his hand down slowly and he started to massage my butt."

It usually began that way with back rubs that wandered. This is how Hacker seduced boys for 25 years. He later told a psychiatrist that he lost count of the boys he had sexual relations with, but it was "well above a hundred."

By anyone's standards, including the Boy Scouts', Hacker should not have been at Camp Falcon. Two states had convicted him of sex acts or fondling with children. He had been forced to resign from at least three schools after being caught fondling students. One Scout troop kicked him out for molesting boys. Supposedly, he was banned for life from the Boy Scouts of America.

Yet for several years Hacker repeatedly molested Danny and more than 30 other boys in his troop. He performed sex acts with some boys dozens of times, often while others watched. Troop 1600, based in a Chicago suburb and sponsored by St. Louis de Montfort Catholic Church, had become a child sex ring.

For more than five years the boys kept quiet about it because of their loyalty to Hacker, the thrill of the sexual intrigues and their fear of getting in trouble if anyone knew what they did.

After his arrest in February 1988, Hacker said he loved the boys and was doing God's work by touching them about sex. In 1989 he was convicted of sexual assault and aggravated criminal sexual abuse and sentenced to 30 years in prison.

Photos courtesy of Daily Southtown / Associated

Thomas Hacker, convicted of sexual abuse in 1988, goes to a court hearing in Burbank, Ill., escorted by Police Department Commander Bill Kuijava.

> **"I fell back into a pattern of taking off their pants ... I took turns staying in all the tents getting as close as possible to all of them. I felt all of them were my children."**
>
> Convicted child molester and former Scoutmaster Thomas Hacker of Illinois.

His Boy Scout career supposedly ended in 1970, when he pleaded guilty in Indiana to an assault on a 14-year-old boy. His troop dismissed him. Local Scout leaders said they sent his name to national headquarters so it could be placed on the "confidential files," a list of adults banned from Scouting.

Hacker moved to Illinois, but in 1971 he was again arrested on sex charges, he pleaded guilty to taking indecent liberties with a boy. He did not get a prison sentence for either conviction. He got counseling but later admitted he didn't take it seriously because he didn't think he was doing anything wrong.

Nevertheless, he was able to join a troop in Illinois. The troop leaders never checked his references. His registration papers were sent to national headquarters, but somehow his name didn't show up in the confidential files. Joseph Anglim, national director of administration for the Boy Scouts, said in an interview that he wasn't sure why Hacker's name didn't show up.

"My question would be the same as yours," Mr. Anglim said. "Why didn't we catch this?"

With the boys of the new troop, Hacker wrote in his autobiography, "I fell back into a pattern of taking their pants off. This went on for a year or two ... I took turns staying in all the tents getting as close as possible to all of them. I felt all of them were my children."

He was caught and arrested. The parents agreed to drop the charges if he got psychiatric help. Troop leaders didn't report Hacker's behavior to national headquarters.

He moved again and landed in the Chicago suburb of Burbank around 1980, where he eventually became director of a municipal agency that ran public parks. He also became assistant Scoutmaster of Troop 1600, based in nearby Oak Lawn.

The boys recalled that Hacker loved campouts. He made sure there was one a month. He talked about movies and games they liked. He let them do things their parents wouldn't. He let them steer his car. He brought them Playboy.

He also told them God loves them and they should go to church. Sometimes, the boys testified, he said this during back rubs.

Parents liked Hacker because he had so much time for their children. One mother would drive her son to Hacker's house for tutoring. The boy testified that he and Hacker engaged in sex acts every time. For a while, the boy said, they slept naked together on every campout.

The problem was, Hacker didn't find adult relationships so rewarding. So he directed his sexual desires to the people he was closest to, those people were under 15.

He lost his first teaching job when a mother discovered he was pulling boys' pants down. No charges were filed.

That set the pattern for Hacker's life. He would prove someplace and become a pillar of the community — president of the Holy Name Society, vice president of the Little League, an award-winning teacher and Scout leader. Then someone would catch him fondling boys. Shocked adults would offer a deal. Resign or they'd tell the police. He'd quit and move.

"He was so charming nobody put him in jail," testified Dr. Marvin Schwarz, a psychiatrist. "Basically everybody fired him, so he could go on elsewhere to molest other children."

He knew, however, that if he didn't stop he could go to jail. He hoped entering church seminaries would help him control his urges. He also went to their Scout leader, and some enjoyed the attention and the secrecy.

Her her didn't pursue all the boys, only those between 10 and 13. He lost interest when the boys developed pubic hair — when they began looking like men.

That's why a Scout troop was perfect for Hacker. A steady supply of 10- and 11-year-old Cub Scouts graduated to his troop.

"Each year more kids were coming in, younger kids," a boy testified. "Each time new kids came in, he would go off to them, as he would like leave you alone."

Ironically, it all ended for Hacker because of a petty theft. In 1987 local police investigated the theft of $573 from a safe in his park office and decided to check the criminal records of her employees. Hacker published. He said he didn't take the money, but he paid back $600 to halt the probe. He told police he didn't want his conviction record exposed.

Police were ahead of him. During investigation, Hacker quit his job, and a local paper, the Southtown Economist, wrote about his criminal record. Parents asked their sons if Hacker did anything sexual to them. Dozens were stunned by the answers. Scouts told tales of sex acts with Hacker dating to 1981.

Two psychiatrists and a psychologist tried to get to the root of Hacker's obsession with boys. One possibility: his relationship with his grandmother.

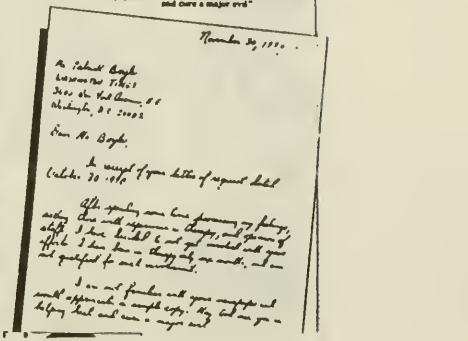
As a child Hacker routinely shared a bed with her and each would rub the other's back and butt. Lawyers argued whether this was the cause of his pedophilia. At the least, his grandmother's back rubs apparently taught him how to seduce boys.

The psychiatrists and the psychologist wondered how Hacker could profess to be a devout Catholic while having sexual relations with boys. "I remember a bizarre conversation we had," Dr. Schwarz testified. "He explained to me that the nuns in school said you couldn't have girls because that was sinful, but they never talked about doing things with boys."

Mr. Hesterich, the psychologist, said Hacker's psychosexual development had stopped at age 11. He was fascinated by boys' genitals and sexual development. He had sexual roleplay with boys at high school. Mr. Hesterich said, and some enjoyed a sexual relationship with an adult.

Hacker's attorney argued for treatment, not jail. He got both. He is now at the Menard Psychiatric Center, an Illinois corrections facility.

From there he sent a letter to The Washington Times rejecting a request for an interview, saying he hasn't been in therapy long enough to talk about his problem. He wrote, "May God use you in helping heal and cure a major evil."



November 29, 1990

Mr. Robert Boyle
Washington Times
3600 New York Avenue NE
Washington, DC 20002

Dear Mr. Boyle,

I received your letter of August 22nd

Catholic, 30 +10,

[illegible]

The Washington Times

SCOUTS HONOR

Not every leader tried to cover up

When the assistant Scoutmaster of a Massachusetts troop was arrested in 1977 for raping several boys at his troop, the local Scouts executive did something unusual: he wrote letters to the victims thanking them for exposing the scandal by telling police.

The church that sponsored the troop also did something unusual: it invited a pediatrician with a degree in psychology "to check the young men involved" and to talk with them.

While troop leaders around the country have routinely tried to ignore or hide reports of sex abuse, cases such as the one in Massachusetts show that occasionally someone decided to confront the problem head on.

It happened in California in 1984 when a troop leader, after hearing about an assistant Scoutmaster fondling several boys, interviewed every boy in the troop to find who else the man may have touched. He reported the incidents to police and the county child protective services after then told the assistant to resign.

It happened that same year in Ohio, when a boy told a camp director that a Scoutmaster had tried to molest him. The camp director told the man to resign and called the boy's parents, who came to the camp to see their son that night.

In the Massachusetts case, the Scout executive wrote the boys notes praising them "for the courage and maturity you all recently displayed in bringing to light an undesirable situation. You should know that you parents and your Scout leaders are proud of you."

Those leaders were ahead of their time. Today Scout rules require local leaders to immediately confront an adult when these abuse allegations are made and to report the incidents to police or a local child protection agency if the law requires it.

Photo courtesy of Dallas Times Herald

"News alerts" are issued by Boy Scouts headquarters in Irving, Texas

'News alert' memo scripts right reaction

Whenever a Boy Scout leader makes headlines for molesting children, he sets off a "news alert" at Scout headquarters in Irving, Texas.

The alert is a memo that warns key Boy Scout officials about bad press and outlines what local Scout leaders will tell the r dia.

go to the Chief Scout Executive, the Scouts' attorney and the Scouts in surance division.

National headquarters advises local leaders on what to tell the media in sex abuse cases. Among the usual responses:

● The Boy Scouts have more than

Following in a list of every case that The Washington Times found involving a Scout leader who was arrested or banned from Scouting for sexual abuse of Scouts:

1 **Alabama** – 1981 – Scouting executive pleaded guilty to a misdemeanor after felony sex charges were dropped. He was asked to resign in 1977 and 1981 but was allowed to stay in Scouting with supervision.

2 **Alabama** – 1981 – Scoutmaster was sent gay porn tapes at undergrads and made sexually suggestive remarks to them.

3 **Alabama** – 1982 – Scoutmaster a police officer convicted on a charge of sodomy after using merit badge training as an excuse to be alone with a Scout.

4 **Alabama** – 1984 – Assistant Scoutmaster resigned from Scouting for bondage a boy while swimming and working on a merit badge.

5 **Alaska** 1984 Scoutmaster convicted on two counts of sexual abuse of a minor

6 **Alaska** 1987 Scout leader convicted of sex abuse

7 **Arizona** 1979 Scoutmaster pleaded guilty to unspecified charges after complaints of sexual abuse at his ranch.

8 **Arizona** 1984 Assistant Scoutmaster convicted of charges of sexual conduct with a minor and child molesting. One victim was a boy age 10.

9 **Arkansas** 1979 Scoutmaster fondled after-school boys at Scout functions and showed them pornography

10 **Arkansas** 1980 Assistant Scoutmaster banned from Scouting for masturbating boys. He was able to reorganize. But was banned again after he handled boys on a 1980 camping trip.

11 **Arkansas** 1987 Scoutmaster banned after he fondled a young boy at Lost Lake Scout Camp.

12 **California** – 1973 – Scout leader banned after Scout reported the Scoutmaster touched the boy's penis while he was sleeping.

13 **California** – 1973 – Scout leader banned after two Scouts reported he tried to have sex with them.

14 **California** – 1974 – Scout leader convicted on sex charges

15 **California** – 1975 – Scoutmaster resigned after accused of fondling a Scout's leg and penis. Scoutmaster admitted he had a problem and was getting help. Now has teaching job.

16 **California** – 1976 – Scoutmaster banned after first and dismissal charge that involved touching pressure points near Scouts' groins

17 **California** – 1976 – Scoutmaster convicted on several sex charges after abusing Scouts and a permanently registered as a sex offender

18 **California** – 1976 – Scoutmaster a photographer with a police record dating back to 1965 was convicted on one count of sexual perversion

19 **California** – 1977 – Scoutmaster convicted on charges of sexual abuse that occurred on Scouts and occurred at a camp

20 **California** – 1977 – Scoutmaster a photographer with an obscene conviction of molesting three boys – 10 11 and 13 – during previous priests and camps terms dating back to 1960 includes possible death of a boy ?

21 **California** – 1978 – Scoutmaster banned after he threatened to kill Scout if he told anyone that the Scoutmaster fondled a boy played strip poker told him to take under wear off and performed fellatio

22 **California** – 1978 – Scoutmaster banned after being accused of several acts with boys including fondling. Parents declined to prosecute

23 **California** – 1981 – Scoutmaster forced to resign immediately after he made advances on boys on Scout outing

24 **California** – 1980 – Scoutmaster convicted on charges of sexual assault on a boy

25 **Colorado** – 1981 – Scouting executive pleaded guilty to a misdemeanor after felony sex charges were dropped. He was asked to resign in 1977 and 1981 but was allowed to stay in Scouting with supervision.

26 **Colorado** – 1981 – Scoutmaster banned and fired from all scouting duties and made sexually suggestive remarks to them

27 **Colorado** – 1982 – Scoutmaster a police officer convicted on a charge of sodomy after using merit badge training as an excuse to be alone with a Scout

28 **Colorado** – 1984 – Assistant Scoutmaster resigned from Scouting for bondage a boy while swimming and working on a merit badge

29 **Colorado** – 1979 – Cub Scout leader banned after being convicted on a charge of sexual assault for fondling boys as he helped plan this picker. Winners dictated to losers what sex acts they had to perform in front of the group

30 **Colorado** – 1979 – Scoutmaster banned out of a troop but never banned so he could get third molestation charge.

31 **Colorado** – 1985 – Scout leader banned after charged with performing oral sex on a Scout

32 **Colorado** – 1988 – Explorer leader banned for life from any position of trust with children after pled with performing oral sex on a Scout

33 **Colorado** – 1988 – Explorer leader banned for life from any position of trust with children after pled with performing oral sex on a Scout

34 **Connecticut** – 1984 – Scout leader banned after two counts of sexual abuse of Scouts

35 **Connecticut** – 1984 – Scout leader banned for life from any position of trust with children after pled with performing oral sex on a Scout

36 **Connecticut** – 1984 – Scout leader banned for life from any position of trust with children after pled with performing oral sex on a Scout

37 **Connecticut** – 1984 – Scout leader banned for life from any position of trust with children after pled with performing oral sex on a Scout

38 **Connecticut** – 1984 – Scout leader banned for life from any position of trust with children after pled with performing oral sex on a Scout

39 **Connecticut** – 1984 – Scout leader banned for life from any position of trust with children after pled with performing oral sex on a Scout

40 **Connecticut** – 1984 – Scout leader banned for life from any position of trust with children after pled with performing oral sex on a Scout

41 **Connecticut** – 1984 – Scout leader banned for life from any position of trust with children after pled with performing oral sex on a Scout

42 **Connecticut** – 1984 – Scout leader banned for life from any position of trust with children after pled with performing oral sex on a Scout

43 **Connecticut** – 1984 – Scout leader banned for life from any position of trust with children after pled with performing oral sex on a Scout

44 **Connecticut** – 1984 – Scout leader banned for life from any position of trust with children after pled with performing oral sex on a Scout

45 **Connecticut** – 1984 – Scout leader banned for life from any position of trust with children after pled with performing oral sex on a Scout

46 **Connecticut** – 1984 – Scout leader banned for life from any position of trust with children after pled with performing oral sex on a Scout

47 **Connecticut** – 1984 – Scout leader banned for life from any position of trust with children after pled with performing oral sex on a Scout

48 **Delaware** – 1988 – Assistant Scoutmaster banned from Scouting for assault rap campers. Local Scouting officials approved and prosecutor did not respond

49 **District of Columbia** – 1979 – Scoutmaster sentenced at probation after being convicted on pornography and sex related charges

50 **Florida** 1971 – Scout leader banned Scout

51 **Florida** – 1973 – Scout leader and child a sex act with a youth leader

52 **Florida** – 1973 – Scout leader molest sexual advances toward a Scout

53 **Florida** – 1973 – Scout leader arrested on charges of lewd and lascivious act on a minor

54 **Florida** – 1973 – Scout leader and Scout engaged in unusual wrestling. Scout mother sued

55 **Florida** 1973 – Scout leader making homosexual calls to a Scout parents sued

56 **Florida** 1975 Scoutmaster to expelled after admitting he molested a Scout at camp

57 **Florida** 1976 Scoutmaster banned from Scouting for fondling a Scout that took

58 **Florida** – 1980 – Assistant Scoutmaster banned from Scouting for taking nude and fondling with boys while in a sleeping bag, another in a hotel room

59 **Florida** 1981 – Scoutmaster banned after he admitted he had a sexual assault with a boy in the troop.

60 **Florida** 1979 Camp leader banned after complaint by that he fondled boys and was chief Hale pastor

61 **Florida** – 1982 – Scoutmaster arrested guilty in two counts of fondling a child and one count of lewd and lascivious acts in the presence of a child

62 **Florida** – 1984 – Scoutmaster banned after he fondled a young boy at Lost Lake Scout Camp

63 **Georgia** – 1984 – Scout leader banned after Scout reported the Scoutmaster touched the boy's penis while he was sleeping

64 **Georgia** – 1973 – Scout leader banned after two Scouts reported he tried to have sex with them

65 **Georgia** – 1974 – Scout leader convicted on sex charges

66 **Georgia** – 1975 – Scoutmaster resigned after accused of fondling a Scout's leg and penis. Scoutmaster admitted he had a problem and was getting help. Now has teaching job.

67 **Georgia** – 1976 – Scoutmaster banned after first and dismissal charge that involved touching pressure points near Scouts' groins

68 **Georgia** – 1976 – Scoutmaster convicted on several sex charges after abusing Scouts and a permanently registered as a sex offender

69 **Georgia** – 1976 – Scoutmaster a photographer with a police record dating back to 1965 was convicted on one count of sexual perversion

70 **Georgia** – 1977 – Scoutmaster convicted on charges of sexual abuse that occurred on Scouts and occurred at a camp

71 **Georgia** – 1977 – Scoutmaster a photographer with an obscene conviction of molesting three boys – 10 11 and 13 – during previous priests and camps terms dating back to 1960 includes possible death of a boy ?

72 **Georgia** – 1978 – Scoutmaster banned after he threatened to kill Scout if he told anyone that the Scoutmaster fondled a boy played strip poker told him to take under wear off and performed fellatio

73 **Georgia** – 1978 – Scoutmaster banned after being accused of several acts with boys including fondling. Parents declined to prosecute

74 **Georgia** – 1981 – Scoutmaster forced to resign immediately after he made advances on boys on Scout outing

75 **Georgia** – 1980 – Scoutmaster convicted on charges of sexual assault on a boy

76 **Hawaii** – 1981 – Scoutmaster banned after he fondled a young boy at Lost Lake Scout Camp

77 **Hawaii** – 1984 – Assistant Scoutmaster convicted on charges of sexual abuse that occurred on Scouts and occurred at a camp

78 **Hawaii** – 1984 – Scoutmaster a photographer with an obscene conviction of molesting three boys – 10 11 and 13 – during previous priests and camps terms dating back to 1960 includes possible death of a boy ?

79 **Hawaii** – 1984 – Scoutmaster banned after he threatened to kill Scout if he told anyone that the Scoutmaster fondled a boy played strip poker told him to take under wear off and performed fellatio

80 **Hawaii** – 1984 – Scoutmaster banned after being accused of several acts with boys including fondling. Parents declined to prosecute

81 **Hawaii** – 1984 – Scoutmaster forced to resign immediately after he made advances on boys on Scout outing

82 **Hawaii** – 1984 – Scoutmaster convicted on charges of sexual abuse

83 **Hawaii** – 1984 – Scoutmaster banned after he fondled a young boy at Lost Lake Scout Camp

84 **Hawaii** – 1984 – Scout leader banned after Scout reported the Scoutmaster touched the boy's penis while he was sleeping

85 **Hawaii** – 1984 – Scout leader banned after two Scouts reported he tried to have sex with them

86 **Hawaii** – 1984 – Scout leader convicted on sex charges

87 **Hawaii** – 1984 – Scoutmaster a photographer with a police record dating back to 1965 was convicted on one count of sexual perversion

88 **Hawaii** – 1984 – Scoutmaster convicted on charges of sexual abuse that occurred on Scouts and occurred at a camp

89 **Hawaii** – 1984 – Scoutmaster a photographer with an obscene conviction of molesting three boys – 10 11 and 13 – during previous priests and camps terms dating back to 1960 includes possible death of a boy ?

90 **Hawaii** – 1984 – Scoutmaster banned after he threatened to kill Scout if he told anyone that the Scoutmaster fondled a boy played strip poker told him to take under wear off and performed fellatio

91 **Hawaii** – 1984 – Scoutmaster banned after being accused of several acts with boys including fondling. Parents declined to prosecute

92 **Hawaii** – 1984 – Scoutmaster forced to resign immediately after he made advances on boys on Scout outing

93 **Hawaii** – 1984 – Scoutmaster convicted on charges of sexual abuse

94 **Hawaii** – 1984 – Scoutmaster banned after he fondled a young boy at Lost Lake Scout Camp

95 **Hawaii** – 1984 – Scout leader banned after Scout reported the Scoutmaster touched the boy's penis while he was sleeping

96 **Hawaii** – 1984 – Scout leader banned after two Scouts reported he tried to have sex with them

97 **Hawaii** – 1984 – Scout leader convicted on sex charges

98 **Hawaii** – 1984 – Scoutmaster a photographer with a police record dating back to 1965 was convicted on one count of sexual perversion

99 **Hawaii** – 1984 – Scoutmaster convicted on charges of sexual abuse that occurred on Scouts and occurred at a camp

100 **Hawaii** – 1984 – Scoutmaster a photographer with an obscene conviction of molesting three boys – 10 11 and 13 – during previous priests and camps terms dating back to 1960 includes possible death of a boy ?

101 **Hawaii** – 1984 – Scoutmaster banned after he threatened to kill Scout if he told anyone that the Scoutmaster fondled a boy played strip poker told him to take under wear off and performed fellatio

102 **Hawaii** – 1984 – Scoutmaster banned after being accused of several acts with boys including fondling. Parents declined to prosecute

103 **Hawaii** – 1984 – Scoutmaster forced to resign immediately after he made advances on boys on Scout outing

104 **Hawaii** – 1984 – Scoutmaster convicted on charges of sexual abuse

105 **Hawaii** – 1984 – Scoutmaster banned after he fondled a young boy at Lost Lake Scout Camp

106 **Hawaii** – 1984 – Scout leader banned after Scout reported the Scoutmaster touched the boy's penis while he was sleeping

107 **Hawaii** – 1984 – Scout leader banned after two Scouts reported he tried to have sex with them

108 **Hawaii** – 1984 – Scout leader convicted on sex charges

109 **Hawaii** – 1984 – Scoutmaster a photographer with a police record dating back to 1965 was convicted on one count of sexual perversion

110 **Hawaii** – 1984 – Scoutmaster convicted on charges of sexual abuse that occurred on Scouts and occurred at a camp

111 **Hawaii** – 1984 – Scoutmaster a photographer with an obscene conviction of molesting three boys – 10 11 and 13 – during previous priests and camps terms dating back to 1960 includes possible death of a boy ?

112 **Hawaii** – 1984 – Scoutmaster banned after he threatened to kill Scout if he told anyone that the Scoutmaster fondled a boy played strip poker told him to take under wear off and performed fellatio

113 **Hawaii** – 1984 – Scoutmaster banned after being accused of several acts with boys including fondling. Parents declined to prosecute

114 **Hawaii** – 1984 – Scoutmaster forced to resign immediately after he made advances on boys on Scout outing

115 **Hawaii** – 1984 – Scoutmaster convicted on charges of sexual abuse

116 **Hawaii** – 1984 – Scoutmaster banned after he fondled a young boy at Lost Lake Scout Camp

117 **Hawaii** – 1984 – Scout leader banned after Scout reported the Scoutmaster touched the boy's penis while he was sleeping

118 **Hawaii** – 1984 – Scout leader banned after two Scouts reported he tried to have sex with them

119 **Hawaii** – 1984 – Scout leader convicted on sex charges

120 **Hawaii** – 1984 – Scoutmaster a photographer with a police record dating back to 1965 was convicted on one count of sexual perversion

121 **Hawaii** – 1984 – Scoutmaster convicted on charges of sexual abuse that occurred on Scouts and occurred at a camp

122 **Hawaii** – 1984 – Scoutmaster a photographer with an obscene conviction of molesting three boys – 10 11 and 13 – during previous priests and camps terms dating back to 1960 includes possible death of a boy ?

123 **Hawaii** – 1984 – Scoutmaster threatened to kill Scout if he told anyone that the Scoutmaster fondled a boy played strip poker told him to take under wear off and performed fellatio

124 **Hawaii** – 1984 – Scoutmaster banned after being accused of several acts with boys including fondling. Parents declined to prosecute

125 **Hawaii** – 1984 – Scoutmaster forced to resign immediately after he made advances on boys on Scout outing

126 **Hawaii** – 1984 – Scoutmaster convicted on charges of sexual abuse

127 **Hawaii** – 1984 – Scoutmaster banned after he fondled a young boy at Lost Lake Scout Camp

128 **Hawaii** – 1984 – Scout leader banned after Scout reported the Scoutmaster touched the boy's penis while he was sleeping

129 **Hawaii** – 1984 – Scout leader banned after two Scouts reported he tried to have sex with them

130 **Hawaii** – 1984 – Scout leader convicted on sex charges

131 **Hawaii** – 1984 – Scoutmaster a photographer with a police record dating back to 1965 was convicted on one count of sexual perversion

132 **Hawaii** – 1984 – Scoutmaster convicted on charges of sexual abuse that occurred on Scouts and occurred at a camp

133 **Hawaii** – 1984 – Scoutmaster a photographer with an obscene conviction of molesting three boys – 10 11 and 13 – during previous priests and camps terms dating back to 1960 includes possible death of a boy ?

134 **Hawaii** – 1984 – Scoutmaster threatened to kill Scout if he told anyone that the Scoutmaster fondled a boy played strip poker told him to take under wear off and performed fellatio

135 **Hawaii** – 1984 – Scoutmaster banned after being accused of several acts with boys including fondling. Parents declined to prosecute

136 **Hawaii** – 1984 – Scoutmaster forced to resign immediately after he made advances on boys on Scout outing

137 **Hawaii** – 1984 – Scoutmaster convicted on charges of sexual abuse

138 **Hawaii** – 1984 – Scoutmaster banned after he fondled a young boy at Lost Lake Scout Camp

139 **Hawaii** – 1984 – Scout leader banned after Scout reported the Scoutmaster touched the boy's penis while he was sleeping

140 **Hawaii** – 1984 – Scout leader banned after two Scouts reported he tried to have sex with them

141 **Hawaii** – 1984 – Scout leader convicted on sex charges

142 **Hawaii** – 1984 – Scoutmaster a photographer with a police record dating back to 1965 was convicted on one count of sexual perversion

143 **Hawaii** – 1984 – Scoutmaster convicted on charges of sexual abuse that occurred on Scouts and occurred at a camp

144 **Hawaii** – 1984 – Scoutmaster a photographer with an obscene conviction of molesting three boys – 10 11 and 13 – during previous priests and camps terms dating back to 1960 includes possible death of a boy ?

145 **Hawaii** – 1984 – Scoutmaster threatened to kill Scout if he told anyone that the Scoutmaster fondled a boy played strip poker told him to take under wear off and performed fellatio

146 **Hawaii** – 1984 – Scoutmaster banned after being accused of several acts with boys including fondling. Parents declined to prosecute

147 **Hawaii** – 1984 – Scoutmaster forced to resign immediately after he made advances on boys on Scout outing

148 **Hawaii** – 1984 – Scoutmaster convicted on charges of sexual abuse

149 **Hawaii** – 1984 – Scoutmaster banned after he fondled a young boy at Lost Lake Scout Camp

150 **Hawaii** – 1984 – Scout leader banned after Scout reported the Scoutmaster touched the boy's penis while he was sleeping

151 **Hawaii** – 1984 – Scout leader banned after two Scouts reported he tried to have sex with them

152 **Hawaii** – 1984 – Scout leader convicted on sex charges

153 **Hawaii** – 1984 – Scoutmaster a photographer with a police record dating back to 1965 was convicted on one count of sexual perversion

154 **Hawaii** – 1984 – Scoutmaster convicted on charges of sexual abuse that occurred on Scouts and occurred at a camp

155 **Hawaii** – 1984 – Scoutmaster a photographer with an obscene conviction of molesting three boys – 10 11 and 13 – during previous priests and camps terms dating back to 1960 includes possible death of a boy ?

156 **Hawaii** – 1984 – Scoutmaster threatened to kill Scout if he told anyone that the Scoutmaster fondled a boy played strip poker told him to take under wear off and performed fellatio

157 **Hawaii** – 1984 – Scoutmaster banned after being accused of several acts with boys including fondling. Parents declined to prosecute

158 **Hawaii** – 1984 – Scoutmaster forced to resign immediately after he made advances on boys on Scout outing

159 **Hawaii** – 1984 – Scoutmaster convicted on charges of sexual abuse

160 **Hawaii** – 1984 – Scoutmaster banned after he fondled a young boy at Lost Lake Scout Camp

161 **Hawaii** – 1984 – Scout leader banned after Scout reported the Scoutmaster touched the boy's penis while he was sleeping

162 **Hawaii** – 1984 – Scout leader banned after two Scouts reported he tried to have sex with them

163 **Hawaii** – 1984 – Scout leader convicted on sex charges

164 **Hawaii** – 1984 – Scoutmaster a photographer with a police record dating back to 1965 was convicted on one count of sexual perversion

165 **Hawaii** – 1984 – Scoutmaster convicted on charges of sexual abuse that occurred on Scouts and occurred at a camp

166 **Hawaii** – 1984 – Scoutmaster a photographer with an obscene conviction of molesting three boys – 10 11 and 13 – during previous priests and camps terms dating back to 1960 includes possible death of a boy ?

167 **Hawaii** – 1984 – Scoutmaster threatened to kill Scout if he told anyone that the Scoutmaster fondled a boy played strip poker told him to take under wear off and performed fellatio

168 **Hawaii** – 1984 – Scoutmaster banned after being accused of several acts with boys including fondling. Parents declined to prosecute

169 **Hawaii** – 1984 – Scoutmaster forced to resign immediately after he made advances on boys on Scout outing

170 **Hawaii** – 1984 – Scoutmaster convicted on charges of sexual abuse

171 **Hawaii** – 1984 – Scoutmaster banned after he fondled a young boy at Lost Lake Scout Camp

172 **Hawaii** – 1984 – Scout leader banned after Scout reported the Scoutmaster touched the boy's penis while he was sleeping

173 **Hawaii** – 1984 – Scout leader banned after two Scouts reported he tried to have sex with them

174 **Hawaii** – 1984 – Scout leader convicted on sex charges

175 **Hawaii** – 1984 – Scoutmaster a photographer with a police record dating back to 1965 was convicted on one count of sexual perversion

176 **Hawaii** – 1984 – Scoutmaster convicted on charges of sexual abuse that occurred on Scouts and occurred at a camp

177 **Hawaii** – 1984 – Scoutmaster a photographer with an obscene conviction of molesting three boys – 10 11 and 13 – during previous priests and camps terms dating back to 1960 includes possible death of a boy ?

178 **Hawaii** – 1984 – Scoutmaster threatened to kill Scout if he told anyone that the Scoutmaster fondled a boy played strip poker told him to take under wear off and performed fellatio

179 **Hawaii** – 1984 – Scoutmaster banned after being accused of several acts with boys including fondling. Parents declined to prosecute

180 **Hawaii** – 1984 – Scoutmaster forced to resign immediately after he made advances on boys on Scout outing

181 **Hawaii** – 1984 – Scoutmaster convicted on charges of sexual abuse

182 **Hawaii** – 1984 – Scoutmaster banned after he fondled a young boy at Lost Lake Scout Camp

183 **Hawaii** – 1984 – Scout leader banned after Scout reported the Scoutmaster touched the boy's penis while he was sleeping

184 **Hawaii** – 1984 – Scout leader banned after two Scouts reported he tried to have sex with them

185 **Hawaii** – 1984 – Scout leader convicted on sex charges

186 **Hawaii** – 1984 – Scoutmaster a photographer with a police record dating back to 1965 was convicted on one count of sexual perversion

187 **Hawaii** – 1984 – Scoutmaster convicted on charges of sexual abuse that occurred on Scouts and occurred at a camp

188 **Hawaii** – 1984 – Scoutmaster a photographer with an obscene conviction of molesting three boys – 10 11 and 13 – during previous priests and camps terms dating back to 1960 includes possible death of a boy ?

189 **Hawaii** – 1984 – Scoutmaster threatened to kill Scout if he told anyone that the Scoutmaster fondled a boy played strip poker told him to take under wear off and performed fellatio

190 **Hawaii** – 1984 – Scoutmaster banned after being accused of several acts with boys including fondling. Parents declined to prosecute

191 **Hawaii** – 1984 – Scoutmaster forced to resign immediately after he made advances on boys on Scout outing

192 **Hawaii** – 1984 – Scoutmaster convicted on charges of sexual abuse

193 **Hawaii** – 1984 – Scoutmaster banned after he fondled a young boy at Lost Lake Scout Camp

194 **Hawaii** – 1984 – Scout leader banned after Scout reported the Scoutmaster touched the boy's penis while he was sleeping

195 **Hawaii** – 1984 – Scout leader banned after two Scouts reported he tried to have sex with them

196 **Hawaii** – 1984 – Scout leader convicted on sex charges

197 **Hawaii** – 1984 – Scoutmaster a photographer with a police record dating back to 1965 was convicted on one count of sexual perversion

198 **Hawaii** – 1984 – Scoutmaster convicted on charges of sexual abuse that occurred on Scouts and occurred at a camp

199 **Hawaii** – 1984 – Scoutmaster a photographer with an obscene conviction of molesting three boys – 10 11 and 13 – during previous priests and camps terms dating back to 1960 includes possible death of a boy ?

200 **Hawaii** – 1984 – Scoutmaster threatened to kill Scout if he told anyone that the Scoutmaster fondled a boy played strip poker told him to take under wear off and performed fellatio

201 **Hawaii** – 1984 – Scoutmaster banned after being accused of several acts with boys including fondling. Parents declined to prosecute

202 **Hawaii** – 1984 – Scoutmaster forced to resign immediately after he made advances on boys on Scout outing

203 **Hawaii** – 1984 – Scoutmaster convicted on charges of sexual abuse

204 **Hawaii** – 1984 – Scoutmaster banned after he fondled a young boy at Lost Lake Scout Camp

205 **Hawaii** – 1984 – Scout leader banned after Scout reported the Scoutmaster touched the boy's penis while he was sleeping

206 **Hawaii** – 1984 – Scout leader banned after two Scouts reported he tried to have sex with them

207 **Hawaii** – 1984 – Scout leader convicted on sex charges

208 **Hawaii** – 1984 – Scoutmaster a photographer with a police record dating back to 1965 was convicted on one count of sexual perversion

209 **Hawaii** – 1984 – Scoutmaster convicted on charges of sexual abuse that occurred on Scouts and occurred at a camp

210 **Hawaii** – 1984 – Scoutmaster a photographer with an obscene conviction of molesting three boys – 10 11 and 13 – during previous priests and camps terms dating back to 1960 includes possible death of a boy ?

211 **Hawaii** – 1984 – Scoutmaster threatened to kill Scout if he told anyone that the Scoutmaster fondled a boy played strip poker told him to take under wear off and performed fellatio

212 **Hawaii** – 1984 – Scoutmaster banned after being accused of several acts with boys including fondling. Parents declined to prosecute

213 **Hawaii** – 1984 – Scoutmaster forced to resign immediately after he made advances on boys on Scout outing

214 **Hawaii** – 1984 – Scoutmaster convicted on charges of sexual abuse

215 **Hawaii** – 1984 – Scoutmaster banned after he fondled a young boy at Lost Lake Scout Camp

216 **Hawaii** – 1984 – Scout leader banned after Scout reported the Scoutmaster touched the boy's penis while he was sleeping

217 **Hawaii** – 1984 – Scout leader banned after two Scouts reported he tried to have sex with them

218 **Hawaii** – 1984 – Scout leader convicted on sex charges

219 **Hawaii** – 1984 – Scoutmaster a photographer with a police record dating back to 1965 was convicted on one count of sexual perversion

220 **Hawaii** – 1984 – Scoutmaster convicted on charges of sexual abuse that occurred on Scouts and occurred at a camp

221 **Hawaii** – 1984 – Scoutmaster a photographer with an obscene conviction of molesting three boys – 10 11 and 13 – during previous priests and camps terms dating back to 1960 includes possible death of a boy ?

222 **Hawaii** – 1984 – Scoutmaster threatened to kill Scout if he told anyone that the Scoutmaster fondled a boy played strip poker told him to take under wear off and performed fellatio

223 **Hawaii** – 1984 – Scoutmaster banned after being accused of several acts with boys including fondling. Parents declined to prosecute

224 **Hawaii** – 1984 – Scoutmaster forced to resign immediately after he made advances on boys on Scout outing

225 **Hawaii** – 1984 – Scoutmaster convicted on charges of sexual abuse

226 **Hawaii** – 1984 – Scoutmaster banned after he fondled a young boy at Lost Lake Scout Camp

227 **Hawaii** – 1984 – Scout leader banned after Scout reported the Scoutmaster touched the boy's penis while he was sleeping

228 **Hawaii** – 1984 – Scout leader banned after two Scouts reported he tried to have sex with them

229 **Hawaii** – 1984 – Scout leader convicted on sex charges

230 **Hawaii** – 1984 – Scoutmaster a photographer with a police record dating back to 1965 was convicted on one count of sexual perversion

231 **Hawaii** – 1984 – Scoutmaster convicted on charges of sexual abuse that occurred on Scouts and occurred at a camp

232 **Hawaii** – 1984 – Scoutmaster a photographer with an obscene conviction of molesting three boys – 10 11 and 13 – during previous priests and camps terms dating back to 1960 includes possible death of a boy ?

233 **Hawaii** – 1984 – Scoutmaster threatened to kill Scout if he told anyone that the Scoutmaster fondled a boy played strip poker told him to take under wear off and performed fellatio

234 **Hawaii** – 1984 – Scoutmaster banned after being accused of several acts with boys including fondling. Parents declined to prosecute

235 **Hawaii** – 1984 – Scoutmaster forced to resign immediately after he made advances on boys on Scout outing

236 **Hawaii** – 1984 – Scoutmaster convicted on charges of sexual abuse

237 **Hawaii** – 1984 – Scoutmaster banned after he fondled a young boy at Lost Lake Scout Camp

238 **Hawaii** – 1984 – Scout leader banned after Scout reported the Scoutmaster touched the boy's penis while he was sleeping

239 **Hawaii** – 1984 – Scout leader banned after two Scouts reported he tried to have sex with them

240 **Hawaii** – 1984 – Scout leader convicted on sex charges

241 **Hawaii** – 1984 – Scoutmaster a photographer with a police record dating back to 1965 was convicted on one count of sexual perversion

242 **Hawaii** – 1984 – Scoutmaster convicted on charges of sexual abuse that occurred on Scouts and occurred at a camp

243 **Hawaii** – 1984 – Scoutmaster a photographer with an obscene conviction of molesting three boys – 10 11 and 13 – during previous priests and camps terms dating back to 1960 includes possible death of a boy ?

244 **Hawaii** – 1984 – Scoutmaster threatened to kill Scout if he told anyone that the Scoutmaster fondled a boy played strip poker told him to take under wear off and performed fellatio

245 **Hawaii** – 1984 – Scoutmaster banned after being accused of several acts with boys including fondling. Parents declined to prosecute

246 **Hawaii** – 1984 – Scoutmaster forced to resign immediately after he made advances on boys on Scout outing

247 **Hawaii** – 1984 – Scoutmaster convicted on charges of sexual abuse

248 **Hawaii** – 1984 – Scoutmaster banned after he fondled a young boy at Lost Lake Scout Camp

249 **Hawaii** – 1984 – Scout leader banned after Scout reported the Scoutmaster touched the boy's penis while he was sleeping

250 **Hawaii** – 1984 – Scout leader banned after two Scouts reported he tried to have sex with them

251 **Hawaii** – 1984 – Scout leader convicted on sex charges

252 **Hawaii** – 1984 – Scoutmaster a photographer with a police record dating back to 1965 was convicted on one count of sexual perversion

253 **Hawaii** – 1984 – Scoutmaster convicted on charges of sexual abuse that occurred on Scouts and occurred at a camp

254 **Hawaii** – 1984 – Scoutmaster a photographer with an obscene conviction of molesting three boys – 10 11 and 13 – during previous priests and camps terms dating back to 1960 includes possible death of a boy ?

255 **Hawaii** – 1984 – Scoutmaster threatened to kill Scout if he told anyone that the Scoutmaster fondled a boy played strip poker told him to take under wear off and performed fellatio

256 **Hawaii** – 1984 – Scoutmaster banned after being accused of several acts with boys including fondling. Parents declined to prosecute

257 **Hawaii** – 1984 – Scoutmaster forced to resign immediately after he made advances on boys on Scout outing

258 **Hawaii** – 1984 – Scoutmaster convicted on charges of sexual abuse

259 **Hawaii** – 1984 – Scoutmaster banned after he fondled a young boy at Lost Lake Scout Camp

260 **Hawaii** – 1984 – Scout leader banned after Scout reported the Scoutmaster touched the boy's penis while he was sleeping

261 **Hawaii** – 1984 – Scout leader banned after two Scouts reported he tried to have sex with them

262 **Hawaii** – 1984 – Scout leader convicted on sex charges

263 **Hawaii** – 1984 – Scoutmaster a photographer with a police record dating back to 1965 was convicted on one count of sexual perversion

264 **Hawaii** – 1984 – Scoutmaster convicted on charges of sexual abuse that occurred on Scouts and occurred at a camp

265 **Hawaii** – 1984 – Scoutmaster a photographer with an obscene conviction of molesting three boys – 10 11 and 13 – during previous priests and camps terms dating back to 1960 includes possible death of a boy ?

266 **Hawaii** – 1984 – Scoutmaster threatened to kill Scout if he told anyone that the Scoutmaster fondled a boy played strip poker told him to take under wear off and performed fellatio

267 **Hawaii** – 1984 – Scoutmaster banned after being accused of several acts with boys including fondling. Parents declined to prosecute

268 **Hawaii** – 1984 – Scoutmaster forced to resign immediately after he made advances on boys on Scout outing

269 **Hawaii** – 1984 – Scoutmaster convicted on charges of sexual abuse

270 **Hawaii** – 1984 – Scoutmaster banned after he fondled a young boy at Lost Lake Scout Camp

271 **Hawaii** – 1984 – Scout leader banned after Scout reported the Scoutmaster touched the boy's penis while he was sleeping

272 **Hawaii** – 1984 – Scout leader banned after two Scouts reported he tried to have sex with them

273 **Hawaii** – 1984 – Scout leader convicted on sex charges

274 **Hawaii** – 1984 – Scoutmaster a photographer with a police record dating back to 1965 was convicted on one count of sexual perversion

275 **Hawaii** – 1984 – Scoutmaster convicted on charges of sexual abuse that occurred on Scouts and occurred at a camp

276 **Hawaii** – 1984 – Scoutmaster a photographer with an obscene conviction of molesting three boys – 10 11 and 13 – during previous priests and camps terms dating back to 1960 includes possible death of a boy ?

277 **Hawaii** – 1984 – Scoutmaster threatened to kill Scout if he told anyone that the Scoutmaster fondled a boy played strip poker told him to take under wear off and performed fellatio

278 **Hawaii** – 1984 – Scoutmaster banned after being accused of several acts with boys including fondling. Parents declined to prosecute

279 **Hawaii** – 1984 – Scoutmaster forced to resign immediately after he made advances on boys on Scout outing

280 **Hawaii** – 1984 – Scoutmaster convicted on charges of sexual abuse

281 **Hawaii** – 1984 – Scoutmaster banned after he fondled a young boy at Lost Lake Scout Camp

282 **Hawaii** – 1984 – Scout leader banned after Scout reported the Scoutmaster touched the boy's penis while he was sleeping

283 **Hawaii** – 1984 – Scout leader banned after two Scouts reported he tried to have sex with them

284 **Hawaii** – 1984 – Scout leader convicted on sex charges

285 **Hawaii** – 1984 – Scoutmaster a photographer with a police record dating back to 1965 was convicted on one count of sexual perversion

286 **Hawaii** – 1984 – Scoutmaster convicted on charges of sexual abuse that occurred on Scouts and occurred at a camp

287 **Hawaii** – 1984 – Scoutmaster a photographer with an obscene conviction of molesting three boys – 10 11 and 13 – during previous priests and camps terms dating back to 1960 includes possible death of a boy ?

288 **Hawaii** – 1984 – Scoutmaster threatened to kill Scout if he told anyone that the Scoutmaster fondled a boy played strip poker told him to take under wear off and performed fellatio

289 **Hawaii** – 1984 – Scoutmaster banned after being accused of several acts with boys including fondling. Parents declined to prosecute

290 **Hawaii** – 1984 – Scoutmaster forced to resign immediately after he made advances on boys on Scout outing

291 **Hawaii** – 1984 – Scoutmaster convicted on charges of sexual abuse

292 **Hawaii** – 1984 – Scoutmaster banned after he fondled a young boy at Lost Lake Scout Camp

293 **Hawaii** – 1984 – Scout leader banned after Scout reported the Scoutmaster touched the boy's penis while he was sleeping

294 **Hawaii** – 1984 – Scout leader banned after two Scouts reported he tried to have sex with them

295 **Hawaii** – 1984 – Scout leader convicted on sex charges

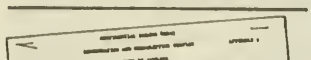
296 **Hawaii** – 1984 – Scoutmaster a photographer with a police record dating back to 1965 was convicted on one count of sexual perversion

297 **Hawaii** – 1984 – Scoutmaster convicted on charges of sexual abuse that occurred on Scouts and occurred at a camp

298 **Hawaii** – 1984

...On Nov. 17, 1983, for instance, the news editor at national headquarters issued an alert about a troop leader and former Cub Scout leader who were arrested on "sex offense charges stemming from an alleged satanic cult. One of the above is being pictured on NY area tv, from a priest, in his Scout uniform. Council president advised of usual procedures."

News alerts are issued for any accident that may draw bad publicity, such as the arrest of a volunteer or a death in a Scout camp. The alerts



Confidential files hold secrets of unfit leaders

The key to studying sex abuse in the Boy Scouts is the "confidential files."

Formally known as the "Ineligible Volunteer File," it was created around 1970 to keep a list of adult volunteers who were banned from Scouting because they were deemed unfit as role models for boys.

Paul Ernst, who maintains the files as director of registration for the Boy Scouts, described them the files as a 1987 deposition. "There are people placed on the file for financial irregularity, their leadership style the morals and ethics of the individual, sexual perversion, robbery, murder. That is not a complete list. That is just a sampling."

In some ways, the files are a barometer of America's changing moral standards. Mr. Ernst said the earliest files were thrown out in the mid 1970s, but he recalled "one of the classics."

"A Scoutmaster and a Scout were driving on a rural road, in the teens or early '20s, and their car broke down. They were both in uniform, and walked down a road. The first place they came to was a little tavern. They went in there to make a call. Somebody saw them, and this guy was put on the file for corrupting the morals of a minor."

When a Scout leader is removed for such sins local Scout officials are supposed to send the information to national headquarters in Irving, Texas, which includes a "confidential record sheet," which gives a basis, biography, and letters police records or newspaper clips describing the offense. Much of the information is kept on a computer, while the files themselves are locked in a cabinet.

Boy Scout headquarters gets about 1,000 cases a year and has more than 2,000 on file at any one time Mr. Ernst has testified.

Each time a troop gets a new volunteer, it sends the volunteer's registration to national headquarters, which checks to see if the person is listed in the confidential files. The same is done when volunteers re-register every year.

The check is done by name and other details, such as birthday and Social Security number. About 1.5 million names are run through this system each year, according to the Boy Scouts.

Mr. Ernst never expected that working for the Boy Scouts would require reading the sordid tales the files hold. He studied accounting in school and joined the Scouts national headquarters in 1956. His first job is keeping track of registration and statistics on the Scouting program.

"The files themselves were very shocking to me when I became director of registration," said Mr. Ernst, who took the post in 1971. "This is one of those things in life that you have to completely divorce yourself from when you leave the [illegible]

3 million volunteers and get only a few sex abuse reports each year.

• Scout leaders are chosen by parents and other local people who run the troop, not by the Boy Scouts of America.

• The Scout leader had been dismissed or is being dismissed, and action was taken as soon as the accusations arose.

• The Boy Scouts try to screen volunteers but there is no foolproof system for detecting child molesters.

• The incident did not occur during a Scout activity or the victims were not Scouts

25 California 1983 – Scoutmaster charged with molesting a boy on a Scout camping trip. The man and the boy he took lived in the same house just from normal chores

26 California 1981 – Scoutmaster banned after his molests sexual adventures to send a troop member

27 California – 1987 – Assistant Scoutmaster banned from Scouting after being in custody of a county molesting the boys and using nylon stockings for his fingers to a boot in his trauma

28 California – 1983 – Assistant Scoutmaster faces guilty on charges of sexual molestation and sodomy

29 California – 1981 – Cub Scout leader charged with 13 counts of sexual abuse involving the boys. Search also found photos of him in sex acts with at least three children

30 California – 1984 – Assistant Scoutmaster be forced to resign after he raped only Latino boys outside of troop meetings to beat and furnish them

31 California 1984 – Assistant Scoutmaster has 44 form Scouting after sexual activities with a Scout

32 California – 1984 – Troop leader removed in Scouting after being discharged from the military for sexual abuse, sodomy and unlawful sexual contact with minors

33 California – 1985 – Scout executive with a police record dating back to 1952 was convicted of 19 counts of sexually abusing four Scouts, one count of lewd and lascivious conduct, 19 counts of oral copulation and one count of failure to appear

34 California – 1985 – Scoutmaster banned for 45 counts of fondling in a three year period

35 California – 1989 – Scoutmaster convicted on four counts of child molestation that dated by 1 year old Scouts to undress in an embrace in the scout master's home, gave enemas and used them to sexually touch

36 California – 1988 – Scoutmaster convicted of having sex with a Scout

37 California – 1986 – Scout leader married on a criminal charge of sexual assault

38 California – 1987 – Scoutmaster three-and-after Scout accused him of sexual misbehavior

39 California 1987 – Scout leader was sentenced to six years in jail after he pleaded guilty to two felony counts

40 California – 1988 – Scout leader sentenced to 7½ years on charges of 14 counts of child molesting. Two charges were dropped in plea bargain

41 California – 1988 – Scoutmaster with a prior record charged with taking child abuse counts for using harnesses to tie up boys. Police found dozens of toys in bondage

42 California – 1988 – Scout leader not handed to police after admitting he molested two Scouts

43 California – 1988 – Scout leader given eight year sentence after pleading guilty to charges of having sex with many and child lewd and lascivious behavior

44 California – 1977 – Scout leader banned from Scouting after a mother took pictures of his sexual fantasies between her son and Scout

45 Colorado – 1977 – Scout leader banned after a mother complained that adult leader took nude pictures both her sons

46 Colorado – 1976 – Scout leader sent out after a mother reported that her son was fondled and was also masturbated

47 Colorado – 1977 – Scoutmaster with a police record in Kansas better comes bail on a charge of second assault of a Scout and helped him for post bond

48 Colorado – 1977 – Assistant Scoutmaster arrested on charges of sexual assault upon a child without force

49 Colorado – 1977 – Scout leader pleaded guilty to a charge of sexual assault

50 Colorado – 1978 – Scoutmaster a photographer convicted on a charge of sexual assault on a child without force for taking nude pictures of Scouts

51 Florida – 1983 – Scoutmaster a Navy petty officer charged with molesting one boy. He admitted photographing hundreds of girls for his at nude Scouts

52 Florida – 1983 – Scout leader banned from Scouting for admitting he molested two pre-teen girls on overnight camping trips with individual Scouts and Scoutmasters

53 Florida – 1983 – Camp health officer dismissed after Scouts were molested his son and others by

54 Florida – 1984 – Assistant Scoutmaster banned after boy said he had sexually molested him on several occasions. The parents decided not to press charges

55 Florida – 1984 – Scout leader sent to jail on charges of sexually assaulting three 11 year-old Scouts. 7 people had to view computer but he pleaded guilty for the sake of confidence

56 Florida – 1988 – Assistant Cub Scout leader sentenced to life in prison for molesting Cub

57 Florida – 1985 – Camp cook and mother arrested but of court after leader talked Scouts to engage in sex acts and used a nudist man-masseur for treatment of an anal injury

58 Florida – 1985 – Scoutmaster is removed on a charge of lewd and lascivious behavior

59 Florida – 1987 – Scoutmaster charged with sexual battery with a minor Scout

60 Florida – 1988 – Scoutmaster banned and in court on a second molesting two Scouts. Arrested on a camping trip

61 Florida – 1988 – Scoutmaster was victim of charges of lewd and lascivious behavior. Police got files on boys in former leader

62 Florida – 1988 – Scoutmaster convicted of sexual abuse charges

Photo by Alexander Tamargo for The Miami Herald

The Rev. Walter Sikora (No. 180) on the altar last week was sentenced to 15 years for sexually abusing Scouts, usually in his church office.

63 Florida – 1988 – Scout leader pleads guilty to charges of molesting boys at Scouting activities. Parents upset he was able to plea bargain

64 Florida – 1988 – Camp cook charged with sexual molestation

65 Georgia – 1977 – Scout leader banned after being accused of child molestation

66 Georgia – 1977 – Scoutmaster banned after hearing of at least two homosexual boys under 14 years

67 Georgia – 1983 – Scoutmaster banned after he fondled a boy in a tent

68 Georgia – 1982 – Committee member in the Latino an summary sexually as molested a mentally retarded Scout

69 Georgia – 1988 – Scout leader found guilty of seven counts of child molesting. Five more charges in Chatahoochee dropped. A jury sentenced him to 20 years for an earlier Gwinnett charge

70 Georgia 1988 – 19 year Scoutmaster charged with molesting boys on a camping trip. Chased down in the woods by police

71 Hawaii – 1982 – Scoutmaster banned and court martialed for child molestation

72 Idaho – 1978 – Scout leader put on probation after pleading guilty to 11 counts of sex-related crimes against nature

73 Illinois – 1988 – Scoutmaster pleaded guilty to four counts of molesting three teenage boys

74 Illinois – 1988 – Scoutmaster with a prior record banned on his 10th years after the big conviction of sexually abusing Scouts

75 Illinois – 1989 – Scoutmaster convicted on sex abuse charges and sentenced to eight years probation

76 Illinois 1988 – Scout leader pleaded guilty to two counts of aggravated sexual abuse

77 Illinois – 1988 – Scout leader charged with rape assault criminal sexual abuse. 16 boys 18 victims identified

78 Indiana – 1974 – Scout leader made sexual advances toward their own personal use

79 Indiana – 1978 – Scout leader made sexual advances on two Scouts

80 Indiana – 1982 – 8 sixteen leader banned in the 1970s for sexual abuse was re-arrested on the pretext of his duties and took his boys in part in campout

81 Indiana – 1989 – Scoutmaster banned after admitting he went to bonfire Scouts

82 Indiana – 1980 – Scoutmaster banned after sexually abusing three Scouts

83 Iowa – 1975 – Scoutmaster banned for sexually abusing a Scout. Scout records show previous problems. The man pleaded to none to Kentucky

84 Iowa – 1977 – Scoutmaster a prior high school teacher, pleaded guilty to three a happens of lewd and lascivious conduct after conducting physical exams

85 Iowa – 1981 – Scoutmaster sentenced to two years in prison for pleading guilty to a lesser charge of lascivious acts with a child as the victim wouldn't have to testify

86 Iowa – 1988 – Scout leader banned after admitting he fondled some of boys

87 Iowa – 1988 – Scout leader sentenced to 10 years in prison for sexually abusing three Scouts

88 Kansas – 1977 – Scout leader fired and bound

89 Kansas – 1977 – Scout leader put on probation

90 Kansas – 1977 – Assistant Scoutmaster was banned after sexually abusing a Scout on a campout. He tried to run in 1981

91 Kansas – 1977 – Assistant Scoutmaster pleaded guilty to charge of taking indecent liberties with a boy. Three acts include masturbation and intercourse and in one incident he and the boys made love. Allegedly informed that was part of the program of the Boy Scouts of America. A band master says

92 Kansas – 1988 – Colorado's convictions in four years probation after pleading guilty to charges of sodomy Scouts

93 Kansas – 1988 – Scout leader banned after complaints that he molested a Scout on a campout. He tried to re-join in 1991

94 Kentucky – 1982 – Camp physician with a prior conviction for abusing child after charges of his two Scouts. Sentenced to two years in a correctional state at camp

95 Kentucky – 1988 – Scout leader 3 minutes indicted on one charge of unlawful sexual misconduct

96 Michigan – 1984 – Scoutmaster pleaded guilty to and drunk after having sex with seven Scouts

97 Michigan – 1984 – Scoutmaster banned after complaint that he took a boy a picnic pit and fondled him

98 Michigan – 1985 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

99 Michigan – 1985 – Assistant Scoutmaster banned for molesting boys

100 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

101 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

102 Michigan – 1988 – Assistant Scoutmaster banned after complaint that he took a boy a picnic pit and fondled him

103 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

104 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

105 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

106 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

107 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

108 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

109 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

110 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

111 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

112 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

113 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

114 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

115 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

116 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

117 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

118 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

119 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

120 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

121 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

122 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

123 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

124 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

125 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

126 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

127 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

128 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

129 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

130 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

131 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

132 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

133 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

134 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

135 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

136 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

137 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

138 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

139 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

140 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

141 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

142 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

143 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

144 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

145 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

146 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

147 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

148 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

149 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

150 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

151 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

152 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

153 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

154 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

155 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

156 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

157 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

158 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

159 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

160 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

161 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

162 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

163 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

164 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

165 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

166 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

167 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

168 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

169 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

170 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

171 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

172 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

173 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

174 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

175 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

176 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

177 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

178 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

179 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

180 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

181 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

182 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

183 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

184 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

185 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

186 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

187 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

188 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

189 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

190 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

191 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

192 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

193 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

194 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

195 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

196 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

197 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

198 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

199 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

200 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

201 Michigan – 1988 – Scout leader banned after complaint that he took a boy a picnic pit and fondled him

202 Minnesota – 1981 – Cub leader arrested and charged after he let boys to home and pornography and video games had sex with them and told the boys of sex to do same through and was married. Pleads to found 200 pictures of nude boys

203 Minnesota – 1984 – Scout leader banned after fondling and touching boys at

COUTS HONOR

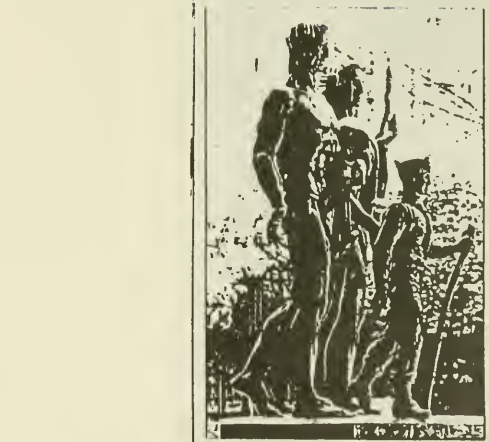


Photo by Barry A. Woodward / The Washington Times

Monument to Scouting

The Boy Scout National Memorial features a Scout in uniform being followed by a naked man and a toga clad woman. It draws curious glances from some onlookers, but the message is hardly sexual: the bronze figures symbolize such traits as clean living and good citizenship.

The memorial was built with money donated by Scouts and was unveiled on the Ellipse in 1964. The figures stand on a marble pedestal in front of a reflecting pool near 15th Street. The male figure, "American Manhood," represents love of country, citizenship, loyalty, honor, courage, clean living and physical development. The female figure, "American Womanhood," represents love of God, high ideals, liberty, freedom, democracy and love of humanity. She carries a flame.

The monument was created by sculptor Donald DeLue and architect William Henry Deacy.

perually at camps. Parents demanded he get counseling.

1964 Mississippi — 1988 Scout leader with a prior record in California and Master says named in a sex abuse lawsuit.

1965 Missouri — 1971 — Scoutmaster fondled a Scout, the jury said.

1966 Missouri — 1971 — Scout leader, 46, sexual relations with a Scout and an Scout reported.

1967 Missouri 1973 Scout leader banned after Scouts complained he was much too sexual advances.

got Scout to sleep naked with men in camp sleeping bag a Scout said.

1968 New Jersey — 1975 — Scoutmaster on all Scout for sex. Man was allowed to stay in Scouting for two more years.

1969 New Jersey — 1975 — Scoutmaster a priest was sentenced to 25 years in prison after admitting he molested 17 boys over 20 years.

1970 New Jersey — 1977 — Scoutmaster, being investigated for a murder was banned from Scouting after complaints that he fondled Scouts in bed, boys in sleeping bags.

former head of a troop's honor society was convicted guilty while the jury was deliberating 16 charges that he sodomized two Scouts.

1971 New York — 1991 — Scoutmaster pled not on probation after Scouts complained of being fondled.

1972 New York — 1983 — Scout leader banned after he was convicted of unnatural and lewd sexual acts with a child under 16 years. His other threat to join a Massachusetts troop.

1973 New York — 1984 — Commissioner convicted on charges of sodomy.

1974 New York — 1984 — Scoutmaster charged with sodomy after he performed oral sex on a Scout at sleep at his camp. He was later convicted.

1975 New York — 1984 — Scoutmaster pleaded guilty to a child abuse charge after a sexual assault on Scouts. Later the man and Scouting officials were involved in an out of court settlement with the victims.

1976 New York — 1984 — Assistant Scoutmaster banned after he made advances on two Scouts and boys or adults at camp.

1977 New York — 1984 — Assistant Scout leader banned after being charges with sexual and drug sex sex abuse.

1978 New York — 1989 — 4 diplomat leader charged with sodomy and sex abuse on more boys of 4 spa-ter pool.

1979 New York — 1988 — 8 spa-ter coach honor a group official charged with sodomy and sex abuse.

1980 New York 1988 — Scoutmaster plead not guilty to a charge of sodomy on one boy.

1981 New York — 1988 — Scoutmaster was lost in a cabin touch him to car in parking lot and engaged in sodomy, the boy said.

1982 New York — 1990 — Scout leader convicted on 35 counts of rape, sodomy, sex act abuse and endangerment of children.

1983 North Carolina — 1973 — Scout leader banned after Scouts complained he made sexual advances on them.

1984 North Carolina — 1973 — Scout leader banned after a Scout complained that he attempted to have sex with him.

1985 North Carolina — 1974 — Scout leader banned after three mothers reported their sons had been molested.

1986 North Carolina — 1978 — Scoutmaster banned after he denied charges he repeatedly tried to molest Scouts at a campout. Boys started a posting in groups of two to protect themselves.

1987 North Carolina — 1977 — Scout leader placed on probation two years after complaints that he exposed himself to boys on campouts.

1988 North Carolina — 1979 — Assistant Scoutmaster banned after he was arrested on last charges of taking indecent liberties with a minor.

1989 North Carolina — 1979 — Scout leader banned after parents complained of writing about advances toward the ex boys.

1990 North Carolina — 1981 — Scoutmaster banned after he invited a boy to share a sleeping bag and then molested him. Parents said with was "terrified."

1991 North Carolina — 1983 — Scoutmaster banned for feeding boys and boys wrestlers rides that involved pass pressure.

1992 North Carolina — 1984 — Scoutmaster banned after he took a Scout on a camping trip and warned the boy to touch the man's genitals. When the Scout refused, the man repeatedly asked him if he'd like to kiss him naked.

1993 North Dakota — 1973 — Scout leader banned after a church reported two ex-adult leader was having "unusual" sexual activities with boys.

1994 Ohio — 1971 — Scout leader convicted of sexual assault on a minor.

1995 Ohio — 1973 — Scout leader master based a boy.

1996 Ohio — 1973 — Scout leader taught boy to masturbate.

1997 Pennsylvania 1974 Scout leader made improper advances to some of the boys in the troop a church leader reported.

1998 Pennsylvania 1918 Scout leader banned who a Scout complained that he masturbated him.

1999 Pennsylvania — 1975 — Scout master banned after he promised to show a Scout how to walk in the night. He took the victim to a church and pressed my son into allowing him to fondle his genitals. the boy a father wrote.

2000 Pennsylvania — 1976 Scoutmaster banned after he performed oral sex on an Scout.

2001 Pennsylvania — 1976 — Assistant Scoutmaster banned after a camping trip. The charges consisted of homosexual at camps by list (name crossed out) and in and case actual relations with a boy during a sleep outing.

2002 Pennsylvania 1977 Scout master banned after a sexual assault and sex to advances on Scouts.

2003 Pennsylvania 1977 — Assistant Scoutmaster banned after he was convicted on a molestation charge after showing pornography to two 12 year-olds.

2004 Pennsylvania — 1977 Scout leader banned for sexually assaulting a Scout and for getting a Scout drunk.

2005 Pennsylvania — 1981 Assistant Scoutmaster described as being slightly re-tarded was banned after he took a 14 year-old on a cabin and showed him an unbuckled pistol and made him shower with the boy and grabbed him by his crotch.

2006 Pennsylvania — 1981 Scout leader banned after making sexual contact with three young Scouts. The man admitted he also had sexual contact with 1 other 1 suspect.

2007 Pennsylvania 1982 Scout master banned after pals, a chap pad here am romancing the man as of a minor in common can with molestation at a school. The police chief promised to keep the man out of the campus gave if the Boy Scouts would keep the man out of Scouting.

2008 Pennsylvania 1983 Assistant Scoutmaster with nine students banned after he and charged with involuntary deviate sexual intercourse, conspiracy, simple assault, indecent assault. He had been dismissed from the Eagle ranks in the 1960s on sex related charge given.

2009 Pennsylvania 1982 Scout leader banned after he sexually abused two boys on his team.

2010 Pennsylvania — 1983 — Scout master convicted of involuntary deviate sexual intercourse a two charges felony plus indecent assault and corruption of a minor. Victims were boys.

2011 Pennsylvania — 1983 — Scout master a teacher convicted on two counts of involuntary deviant sexual intercourse, corrupt-ing minors and endangerment of welfare of children.

2012 Pennsylvania — 1983 — Assistant Scoutmaster banned after his activity logs seven Scouts, simple abuse his "center bo-som and.

2013 Pennsylvania — 1984 — Scout master a pervs affa-ir banned after he was charged with 30 sex abuse counts after Scouts were molested during campouts. He spend time shut, got into sleeping bags and fondled boys and told them it was a part of scouting. He was convicted and sentenced to one to five years in prison.

2014 Pennsylvania — 1984 — Cub Scout leader banned after he pleaded guilty to carrying out all a minor in a plan charges. He was accused of involuntary deviant sexual intercourse and indecent assault involving at least four Scouts.

2015 Pennsylvania 1985 Assistant Scoutmaster acquitted on a charge of sexual abuse but the jury was unaware the man had previously pleaded no contest to a charge of molesting the same boy.

2016 Pennsylvania 1986 — Scoutmaster pleaded guilty to aggravated sexual assault after he molested Scouts at his home.

Q&A

Sexual abuse of boys may be the most underreported and least understood form of child abuse. Here are some facts and explanations to help understand the problem and put it to rest:

How many children are sexually abused in the United States?

No one knows although there are some loose estimates. The American Humane Association says 132 000 children were reported sexually abused in the United States in 1986, the last year for which figures are available. But those are only cases that were reported from state child abuse agencies. Experts estimate that 10 to 25 percent of all children are sexually abused before the age of 18. In 1985 a Los Angeles Times poll concluded that at least 22 percent of all Americans have been victims of child sex abuse.

What is child sexual abuse?

There are many definitions, but for the purposes of this project The Washington Times defines it as the use of the child for sexual gratification. This usually involves touching the child, but may also involve photographing a child nude or in lewd poses, exposing genitals to a child, masturbating in front of a child or asking a child to perform sex acts.

What is a pedophile?

Special agent Kenneth Lanning, the FBI's expert on child sex abuse defined a pedophile as "A significantly older individual who prefers to have sex with individuals legally considered children. The pedophile at one whose sexual fantasies and erotic imagery focus on children." Not all pedophiles are child molesters because they do not all act on their sexual attraction to child or There is no law against being a pedophile.

Then what's a child molester?

An adult who has sexual relations with a child, or a child who has sexual relations with another child who is several years younger. Most child molesters are pedophiles, but not all of them are. An adult who prefers to have sexual relations with adults may have sexual relations with a child because of temporary emotional problems, anger or curiosity. However, the vast majority of Scout leaders who have had sexual relations with boys appear to be "fixated" pedophiles, meaning they are primarily attracted to children.

Who are the most common molesters?

The vast majority of adults who abuse boys or girls are males. Some experts say that about one third of all abusers are older children, mostly teen age boys.

Is the sexual abuse of boys different from sex abuse of girls?

About 20 25 percent of sex abuse victims are boys, according to various studies. While girls are usually molested by a male family member, boys are usually molested by a male outside the home, like a friend of the family, a neighbor or authority figure. This is why abuse of a kid in groups like the Boy Scouts, where men are with boys they're not related to.

How often do molesters molest?

Men who molest boys are more active than any type of child molester, experts say. Atlanta psychiatrist Dr. Gene Abel, in a study of 153 men who abused boys, found that they had a total of 22 981 victims — an average of 150 each. Dr. Abel cautioned that some men had thousands of victims, which drove up the average but he said most men who abuse boys have at least several victims.

Why don't the boys just tell on the abuser?

Sexual abuse of children a considered one of the country's most underreported crimes, largely because children and their parents are often too embarrassed to tell anyone about it. Some experts say only one of every 10 molesters is reported.

Experts say that boys are less likely than girls to report abuse because boys are raised to be "tough" and to think they're lucky to have sexual relations at an early age. Boys who are abused by men are the least likely of all to report abuse, experts say, often because of fear that people will call them homosexual.

The Washington Times study of abuse in the Boy Scouts focuses only on reported cases of boys abused by men.

What's a child sex ring?

Mr. Lanning, in his publication, "Child Sex Rings: A Behavioral Analysis," defines a sex ring as "one or more offenders simultaneously involved sexually with several victims." This does not necessarily involve group sex, it usually means one man is having sexual relations with several boys individually, although the boys may know each other and know about each other's sexual activity. Many of the Boy Scout cases fit this definition.

assault – 1973 – Sexual battery – owner of Bonanza Bell Hotel – they said employed an exotic dancer

assault – 1976 – Sexual battery – a juvenile reported he was making movies toward them both

assault – 1979 – Simultaneous – a boy "mostly homosexual acts" was molested in more than boys' in sex

assault – 1979 – Simultaneous – at his way processed for committing battery. Charges were dropped as defendant had to put their son out

assault – 1979 – Simultaneous – + defendants his "sister boys up the afternoons" to play with their game was dismissed a buddy system no longer served with him

assault – 1979 – Aggravated – an teamwork for molesting boys on a

assault – 1979 – Simultaneous – two charges after assaults attempted persons when boys stepped at his

assault – 1980 – Aggravated – an teamwork after several of boys came + terrified them at camps. The man + negotiated and parents and with + did not believe complaints

assault – 1981 – Attempt + + homosexual + bench. Indicted after and she boy + pressed game on a camp

assault – 1983 – Aggravated – our found guilty of fondling his as a hanger + the shape of male

assault – 1983 – Simultaneous – to of pretending our Scouts of three and boys with + hanger in shape of male

assault – 1984 – Aggravated – son an adolescent puts a chief him – men years + put his molesting boys of + camp

assault – 1984 – Commodore chief county sexual services to ex + pressed years + probation by the Scouts contact with + boy + finds his other on + top

battered – 1978 – Indictment + recovered after + boy 11 complained adult dads trying to pretend hath. So found and + arrest of 20 previous complaints had no

batters – 1979 – Against + months of an ex battery + of an adult male

abrasha – 1981 – Small Beetle – bit his waist + on face after pleading + + counts of lewd + male acts with + a Scout during

abrasha – 1982 – Sr. + leader – bit his + to might + + at + being + of + + charges sexual assault

abrasha – 1982 – Assistant – owner + found of + boy + + Scout

abrasha – 1983 – Scoutmaster – sat as 15 to 25 + men + + groups for + + + Scout. He + + + Scouts + + + these + + +

SCOUTS HONOR

METHODS OF SEDUCTION

Troop leaders are most likely to molest Boy Scouts during campouts or while the boys are sleeping over at the abuser's home. The men also use merit badges, first aid training, hazing and the Scout pledge of loyalty to befriend boys, molest them and keep them quiet, according to a study of the methods used by more than 400 Scout leaders accused of molesting boys.

The cases confirm what experts say about men who have sex with boys. They usually don't force themselves on their victims, as men do in rape. Rather, they pressure, seduce or trick boys into going along with sexual activity, often playing on the boys' sexual curiosity.

These are some of the traditional situations and ploys that men have turned into conduits for sex:

CAMPOUTS

This is the most popular setting for abuse, because parents are far away and the tents and woods afford plenty of privacy. Most important, campouts give men access to boys while they sleep and change clothes.

A skilled pedophile who can get child an into a situation where they must change clothing or stay with him overnight will almost always succeed in seducing them," Kenneth Lanning, the FBI's specialist in child sex abuse, wrote in a 1987 analysis of child molesters.

Usually the Scout leaders seduce boys with rubdowns or sex talk at bedtime, but some boys are molested in their sleep. A Scout from a New York troop wrote that about what happened in his tent in June 1979:

"In the middle of the night, something disturbed me and I woke up. As I opened my eyes to see what was going on, [the Scoutmaster] was getting off me nude. My sleeping bag was unzippered and my bathing suit that I was sleeping in was at my knees. My [rear end] was sore as if some one fucked it in."

AUTHORITY AND LOYALTY

In his position as role model and mentor, a Scoutmaster will tell boys that sex with men is part of growing up. He may convince them they owe him sexual favors in exchange for all he's done for them. To keep it secret, he may invoke loyalty and trustworthiness — parts of the Scout Law — to convince the boys they shouldn't tell.

Two New Jersey men arrested in 1984 on 54 counts of sexual abuse had been fondling and performing oral sex on Scouts in their troop for at least four years. The men pleaded guilty in exchange for some of the charges being dropped.

Several boys told detectives that they kept quiet about it because, according to an investigator's report, the men instructed them "to honor the Boy Scout duty of loyalty."

GAMES

Some Scout leaders create games that lead to sex play. This is often done in groups. An Indiana Scoutmaster resigned in 1984 after adults discovered he was playing strip darts. The boys threw darts at a target and whoever missed had to remove a piece of clothing.

INITIATION RITES

Some Scoutmasters create secret societies or initiation rites in the troops. They may take an existing group — like the Order of the Arrow, a Scouts honor society — and make up sexual and nonsexual rituals for the boys. The activities usually are groups, are often fun and the boys are excited about being part of a secret group.

A Los Angeles Scoutmaster was convicted of child molesting in 1985 after it was discovered he made his Scouts undress for their initiation, then took their pictures and gave them anonymous. He had been running his own troop for nearly two decades.

PHYSICAL EXAMS

Fraudulent sessions and physicals are commonly used as excuses to touch boys' buttocks and genitals. Molesters often say they have to show boys the locations of pressure points, they usually pick the femoral artery on the thigh near the groin.

TRIPS ALONE

The Scout leader will tell a boy and his parents that they're going on a group trip, but only one boy shows up. The Scout leader says the others canceled so they spend the day or weekend alone.

"It was supposed to be other people going up with me. It turned out that it was just gonna be me and him," a former New Jersey Scout said in an interview, recalling a trip to a camp with his Scoutmaster. He said the Scoutmaster held his hands and tried to molest him, then masturbated.

SLEEPOVERS

Scoutmasters persuade parents to let boys stay overnight, usually the night before an early Scout trip. The man typically gives the boy a bed or couch to sleep on and later bundles him or slips under the covers with him.

AWARDS

Scoutmasters sometimes reward accommodating boys with merit badges and higher ranks. One Scout wrote about this Scoutmaster: "In his troop in order for a Scout to advance he expected you to fool around with him, and if you didn't then you wouldn't advance". A Florida Scout leader created special "pacesetter awards" for "outstanding achievement" in the troop. The prize: trips across country or overseas with the Scoutmaster. He later pleaded guilty to molesting the winners.

Checking criminal background not foolproof, often not possible

When the Boy Scouts of America want to know if a volunteer has ever molested children, they just ask him.

"Have you ever been convicted of a criminal offense?" asks the Scouts' new application for volunteers. "Have you ever been charged with child neglect or abuse?"

"I don't know anyone who's going to say yes to that," said Bennett Wolff, a Louisiana attorney for a boy molested at a Scout camp.

Sure, however, there may be a better way. A Senate committee is considering the creation of a national database of every person convicted of child molesting, so that youth groups could check up on people who apply to work with children.

Most youth groups today cannot run nationwide criminal background checks. Federal law doesn't let them use the FBI's files.

They can ask a state if someone has a conviction record there, but the Scouts don't require it.

In The Washington Times study of 416 sex abuse cases in Scouting, only 70 cases stated whether the abusers had prior criminal records. In 21 of the cases, they did, 18 had been convicted for sex offenses against children, while the others were convicted of assault, larceny and prostitution. Two of the sex offenders had also been convicted of kidnapping. One man, kicked out of a troop in 1977 for molesting boys, had nine prior arrests on sex abuse charges dating back to 1960.

These cases reflect a problem for all volunteer youth groups. Most abusers don't have conviction records, but those who do can easily join youth groups because no one looks into their criminal history.

"There isn't a good national check," said Jill Hiatt, a California prosecutor who recently served as senior attorney at the National Center for Prosecution of Child Abuse. "At least conviction records they should be available to Big Brothers and Boy Scouts and Campfire Girls."

That would take an act of Congress.

The best resource for conviction records is the FBI, which has criminal history records on 25 million people convicted of various offenses. The records are used mainly by police departments and courts, said Rod Mercer, chief of the correspondence and special services section of the FBI.

In addition, Mr. Mercer said, Congress requires the FBI to run background checks on people applying to work in certain places, such as banks and nuclear plants. Also, some states require nationwide background checks for certain child care workers, in which case the FBI will run a fingerprint check on those workers.

Maryland, for instance, requires a background check for people working in youth summer camps so their fingerprints are sent to the FBI. The state law doesn't cover Scout volunteers.

This month Sen. Mitch McConnell, a Kentucky Republican, introduced a bill that would create a national database of convicted molesters, under the FBI. Local police could check the database on behalf of schools, day care centers and youth groups such as the Scouts. The bill is before the Judiciary Committee.

"Child molesters are habitual repeaters," Mr. McConnell said. "Chances are that someplace along the line they will be convicted. Getting this kind of criminal record in a central place will be an invaluable tool to those that are in the child care business, like day care centers, Boy Scouts and Girl Scouts."

In the meantime, some youth groups, such as Big Brothers, run statewide criminal background checks on volunteers at least in the state where the volunteer lives and sometimes in neighboring states. Many states will run such a search for about $10.

The Scouts don't require that, saying that it wouldn't help much because most molesters don't have conviction records, and that it would be too expensive because they have so many volunteers.

'Cure' for pedophiles is a matter of control

There is no cure for pedophilia.

There is no way to be sure that a man who is sexually attracted to children can ever erase those urges, even if he wants to and even if he gets the best treatment in the country.

"The best guarantee that he never does this again is either you execute him — which of course you can't do — or put him away forever," Dr. Fred Berlin testified in a sentencing hearing for a Virginia Scoutmaster convicted of molesting a boy.

With neither option likely, treatment programs focus on teaching men to control their attraction to children, much the way an alcoholic learns to control a taste for liquor or an ex-con acts with children.

Treatment programs focus on getting molesters to understand the damage they've done to children, to explore why they're attracted to children and to develop sexual relationships with adults. This often involves group therapy with other pedophiles.

It's such an embarrassing topic, however, that therapists say it is impossible to treat someone in a general population prison. "There's no way you can get a sex offender to be honest with another group of offenders," said Wayne Hunt, chief psychologist at the Maryland Reception Diagnostic and Classification

SCOUTING'S STRATEGY TO FIGHT ABUSE

These changes in the Boy Scout program are designed to reduce opportunities for sex abuse and handle allegations of abuse:

Screening

The new application for adult leaders asks if the volunteer has a conviction record or has ever been charged with child abuse. The Boy Scouts of America say local committees must call previous employers and youth groups, including other troops, to check on the history of the volunteer before accepting him.

Girl-shy guy found comfort in boys

For Michael, a 23-year-old Scout leader from Montgomery County, girls had always been frightening creatures.

"Alien and unapproachable," his psychiatrist wrote. So in high school Michael began experimenting with younger boys, and kept it secret until he was arrested in 1979 for molesting an 11 year old Scout and taking nude photos of him.

A psychiatrist's report and a brief interview with Michael offer insight into how he became a child molester, and how his conviction may have cost him any chance of having children.

Michael was socially awkward and shy, says the psychiatrist's report on his court file, and his early attempts at dating made his anxiety worse. He recalled trying to have sexual relations with a girl at home when he was 17, but "he fearfully anticipated his father's arrival and was anxious and afraid of the girl's breasts."

"He brought a date by to see us one evening," his aunt wrote, "but told me that he felt he had trouble communicating with girls." He was a good person, she said, but "immature".

Many boys feel awkward around girls, but most overcome it or pair with males their own age. Michael did neither. "Feeling retarded and inadequate as a male," the psychiatrist wrote, "he selects young boys with whom he can feel control and power."

Michael became Scoutmaster of a District troop, befriending boys who were "at his same level of psychosexual development," the psychiatrist wrote. "In this way he can experience closeness, particularly of the father-son type, in a safe and controlled setting. Enhancing this sense of control is the sexual instruction which he gives the boys."

He offered that instruction to a Scout who stayed at his apartment the night before a campout in June 1978. Michael "began to take photographs of the boy in the shower," the psychiatrist wrote. "The boy began asking questions about sex, and [Michael] brought out some books to instruct him in these matters. [Michael] asked if he knew about fellatio and performed the act on the boy, taking additional pictures."

He was arrested the following February, and pleaded guilty. "He seemed quite ashamed of his sexual history," the psychiatrist wrote. The judge sentenced him to five years' probation and to treatment.

Michael got married in 1981, but has no children. He and his wife said in an interview that they've tried to adopt, but have been repeatedly rejected. Someone always reports his conviction to adoption agencies, he said, "and puts a wrench in it."

"That's one thing I miss very much, is working with children," he said.

This has really taken a toll on our marriage," his wife said. "He's a good husband."

"The child is to the pedophile what the bottle of alcohol is to the alcoholic," said Dr. Berlin, director of the sexual disorders clinic at Johns Hopkins University Hospital. "We don't think of a cure for alcohol ism, but we believe people can ever cease."

One key to overcoming is not having alone with boys — which is why Scout troops are bad places for pedophiles, even those who think they've made control.

Scout leader Richard Sanger of Calabasas was arrested for child molesting in 1971 and pleaded guilty to contributing to the delinquency of minors. He joined another troop years later, and in 1989 was again arrested for molesting boys in his troop.

"His counselor indicated his problem had been eradicated," a Scout official told the San Jose Mercury News.

Dr Berlin testifying in the 1986 sentencing of Scoutmaster Arthur Bittenbender of Reston, tried to explain the difficulty of changing a man's sexual attraction to children:

"Suppose someone said to me, 'Look, doctor, I am going to teach you to no longer be attracted sexually to women, and at the same time I am going to teach you to crave sexual involvement with little boys' Well, I'd think that we really pretty crazy if somebody thought that they were going to teach me to do that. And yet that is often what we try to teach individuals such as Mr. Bittenbender to reverse."

The first struggle in treatment is convincing a pedophile his sexual orientation is wrong. Some men believe society is misguided in its ban

Center in Baltimore.

That is one of the few corrections centers in the country where men offenders are grouped together and attend therapy designed for their offense.

Most man convicted of molesting children will find little treatment in prison. Mr Hunt's facility has just 24 beds. Virginia has six offender programs in state prisons, but "the quality of the programs really varies with the experience of the people running them," said Scott Richardson, a corrections department manager.

The District has no program for sex offenders, said corrections spokeswoman Patricia Wheeler.

Some people say molesters should just be punished, but Mr Hunt said treatment is a "public safety issue."

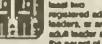
"If somebody's going to get out in two or three years, you might as well treat them," he said. "We're not in it because we feel sorry for these guys."

Sometimes judges prescribe a drug, Depo-Provera, to decrease an offender's sex drive. The problem, of course, is that he can stop taking it. Some people have suggested removing a man's testicles to eliminate his sex drive, but talk of changing behavior through surgery usually gets a cool response.

The key is not having sexual relations with boys in unattention, said two former Scout leaders convicted of sex abuse.

"As far as making sure an future molestation cases occur, that has to come from the individual person," said one man who is out of prison and sees a therapist. "No doctor's gonna stop that."

Two-deep leadership



On all Scout trips there must be at least two registered adult leaders, or an adult leader and the parent of one of the boys. The Scouts say the rule has existed for a long time but often was ignored.

Sleeping arrangements

Scouts are not allowed to sleep in tents with adults other than their parents.

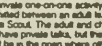
One-on-one

No private one-on-one activity is permitted between an adult leader and a Scout. The adult and child can have private talks, but they must be in the open where others can see them.

Secret groups

Secret organizations within troops are not permitted and hazing is prohibited.

Reporting



All allegations of abuse must be reported to the local Scout executive, who must report the allegation to local police or child protection agencies if local law requires it, and to national headquarters if the allegation is substantiated.

Pedophilic preference is class all its own

For decades, Boy Scout leaders have tried to protect Scouts from sex abusers by watching out for men they thought were gay. They were watching out for the wrong people.

Most men who have sexual relations with boys are heterosexual as adults, according to several studies of child abusers. They have sexual relationships with adult women, but children may be their primary or secondary sexual interest.

A study of abusers in the Boy Scouts supports that theory. Of 200 cases in which the marital status of the abuser was known, 64 were married or engaged, and at least 18 were divorced. Several others lived with women, usually the mother of the abused boy.

In several cases where a Scout leader was caught molesting boys, other leaders explained they had no reason to suspect the man was homosexual.

But some sex abuse experts say pedophilia seems to be a sexual orientation of its own rather than a spinoff of a person's adult sexual preference.

It is a faulty assumption that if an adult male selects a young boy as a victim that this constitutes a homosexual orientation on the part of the offender," psychologist Nicholas Groth, who studied sex offenders in Connecticut prisons, wrote in 1978. "Offenders who are attracted to boy victims typically report that they are unmotivated or revulsed by adult homosexual relationships and find the young boy's feminine characteristics and absence of secondary sexual characteristics appealing."

About 20 percent of men who abuse boys are homosexual in their adult relationships, said Atlanta psychiatrist Dr. Gene Abel, while the rest are heterosexual or bisexual.

Some men who have sexual relations with boys or girls say they aren't sure what their adult sexual orientation is — if they have one.

"That's one of the issues I'm struggling with," said John Fitzgerald, a former Scout leader now in a New Jersey prison for molesting boys. "I don't know what the hell I am. I don't know because I never had a relationship with a woman."

The Scouts' "Youth Protection Guidelines," distributed to Scout leaders, says it is a "myth" that "children are at greater risk of sexual victimization from gay adults than from straight adults."

The organization does prohibit homosexuals from being adult leaders, however, saying they're not proper role models for Scouts. In California, former Eagle Scout Timothy Curran is suing the Scouts for barring him from being an adult leader because he is openly gay.

SELECTING A LEADER FOR BOYS

How someone becomes a Scoutmaster

Recruitment: When a troop needs a Scoutmaster, the group that sponsors the troop such as a church or PTA, tries to recruit someone or accepts volunteers. The person may be the parent of a child in the troop, someone already working with the troop such as an assistant Scoutmaster, or just someone from the community.

First meeting: The prospective Scoutmaster fills out an application and meets with members of the troop committee, which is a group of volunteers that runs the troop on behalf of the sponsor. If the volunteer is an easily well known to parents and troop leaders, they may see no need for a meeting.

Reference check: The committee is supposed to check the volunteer's references but this is sometimes not done. Sometimes conduct a criminal background check in three states, but the Boy Scouts of America do not require it.

Approval: The committee approves the Scoutmaster and informs the local Scout council which oversees several troops in the area and which also must approve the Scoutmaster.

Registration: The Scoutmaster's registration is sent to national headquarters in Irving, Texas. The name is checked against a computer list of adults who have been banned from scouting. If the volunteer is not on that list, he is accepted.

The Washington Times

Classes on abuse can offend sponsors

One of the touchiest issues for the Boy Scouts in dealing with sex abuse is the risk of offending two vital groups: the churches that sponsor troops and the volunteers who run the troops.

Some churches have told the Scouts that sexual issues are moral matters to be handled by church and family and shouldn't be part of the Scouting program. It's an opinion that carries some weight, since religious organizations sponsor 51 percent of all Boy Scout troops and Cub Scout packs.

"A substantial segment of mainline conservative organizations have, in effect, communicated to the organization that issues of moral character are their responsibility, and they do not want the Boy Scout program emphasizing these things," the chairman of the Scouts' Health and Safety Committee testified in a 1987 deposition involving a lawsuit over a Florida boy abused by his Scout master.

Religion is an integral part of Scouting. In fact, reverence to God is the 12th part of the Scout Law. At some Mormon churches, boys are required to join the church-sponsored troop.

"There are a number of sponsoring organizations, particularly the LDS Church, the Mormon Church, that have made it quite clear they want the Scouting programs as part of their youth program, but they want issues of moral, sexual aspects to be strictly part of the church's teaching and program," testified the health committee chairman, Dr Walter Menninger.

"They're a very substantial force," he said. "There has been evidence that some of the Catholic sponsoring organizations have had concerns about it."

In 416 cases of sex abuse in Scouting over the past 10 years The Washington Times was able to determine the sponsor of the troops in only 70 of the cases. In all of those cases, the sponsors were churches or synagogues.

When the Scouts did decide to develop a sex abuse education program several years ago, they worried about scaring away volunteers. The concern was that even people with no sexual interest in boys wouldn't volunteer if they had to go through extensive background checks and courses on sex abuse.

"What you have is a situation where you're putting obstacles in the way of people who are going to donate their time and money to help you," said James Tarr, the nation's chief Scout executive through 1984. "The more paperwork involved, the more obstacles, the less likely someone's going to be enthusiastic."

A former Scoutmaster, convicted of sexually abusing boys in his troop, agreed.

"If you have to go through so much to volunteer your time — you're probably spending some of your own money — how much do you go through before you say, 'Hey, I don't need this!'" he said.

Like most volunteer organizations, the Boy Scouts have trouble getting enough adults to manage their programs. It's hard to get any adult help on Scouting," Scoutmaster Joseph Magruder testified in a 1987 deposition in Florida.

Corporate policy kept abuse secret

By Patrick Boyle
THE WASHINGTON TIMES

In the spring of 1982, a disturbing letter made its way to Irving, Texas, and landed on the desk of Paul Ernst, director of registration for the Boy Scouts of America.

The letter said a South Carolina Scout leader was arrested for taking pictures of naked children.

But there was good news. "So far, we have received no bad publicity from this," wrote Chubby Earnest, the local Scout executive who over saw the troop. "We'll keep our fingers crossed."

"I hope the media maintains its silence relating to his involvement with Scouting," Mr. Ernst wrote back. "That will certainly help us, not only in your area but across the country."

•••

That's how sex abuse remained one of the best kept secrets in the Boy Scouts of America.

Nearly once every two weeks for the past 19 years, a Scout leader or camp worker has been banned for sexual misconduct with children. Except for a few people at national headquarters, an one — either in the public or in Scouting itself — knew how many Scouts with were abused.

But Scout officials knew that if the public heard about leaders having sexual relations with boys, parents would be afraid to let their children join.

"Like anybody, we were not interested in broadcasting it," said Joseph Anglim, director of administration for the Boy Scouts. "For years and years it was one of America's greatest secrets."

So the Boy Scouts of America — which is, after all, a corporation chartered by Congress — acted like a corporation.

"The attitude was more of sweeping it under the rug and hoping it goes away," said Edward Allanson, a Scout leader in Prince George's County.

•••

In 1983 the leaders of a troop in Cocoanut Grove, Fla., put a Scoutmaster on probation after learning he brought Scouts to his bedroom and fondled them. The conditions of probation — no private meetings with boys and "no touching of any area of the body, genital, and and/or chest that is generally accepted as private," according to a memo from the pastor of the Episcopal church that sponsored the troop. Parents weren't told about the probation.

The next year Scout officials got more evidence of sex abuse and forced the man to resign. Parents were not told why Troop officials didn't tell police, either. Two of the Scouts eventually did, and the man was convicted of sex abuse.

•••

In many ways, child abuse experts say, the Boy Scouts were a mirror of American society. Embarrassed by sex abuse and not sure what to do about it, Americans have tended to turn their heads "I would say up until the '70s, if an incident occurred in a school, a club, a Scouting program, it was pigeonholed," said Mickey McAllister, a retired professional Scouter who worked on the Scouts' new sex abuse education program.

To keep it quiet, local Scout officials often made deals with molesters they wouldn't call the police if the accused man would resign, and maybe move away. "That's America's way of handling that — get away from my neighborhood," Mr Anglim said.

Scout files show this was often done with cooperation of parents, who wanted to spare their children and families the embarrassment of a trial.

"I think they were aware they'd be in the public limelight, and their kid would be embarrassed," said George Trequair, a retired Scout executive who oversaw troops in Massachusetts. Mr Trequair said he handled about six abuse cases during his several decades in Scouting, and the men usually left the troops quietly with no charges filed.

In 1978, a volunteer in a Massachusetts troop admitted "that he engaged in sexual acts with one of our Scouts," Mr Trequair wrote to Mr Ernst. The man agreed to resign, and the parents "fortunately have decided not to prosecute."

"Most people, when they're presented with the option, they decide not to press charges," Mr Trequair said. "I preferred not to have that kind of publicity."

•••

Scout officials now admit this practice was a mistake because it let molesters move on to other troops and other children. Many states require child care workers to report suspected child abuse to police or social service agencies in at least one case — in Pennsylvania in 1984 — police charged a local Scout official with violating state law by not reporting suspected abuse by a Scout leader.

Other times, however, police cooperated in the secrecy, quietly dropping charges or helping keep abuse reports out of the press. When a Scout leader was arrested for molesting boys in a Pennsylvania troop in 1981, the local Scout executive visited the police chief, then wrote to Mr Ernst: "He told me that he would do everything he could to keep that account out of the newspaper to protect the name of the Boy Scouts."

•••

The local Scout leaders didn't know how many other sex abuse reports were coming from other troops to national headquarters. And at national headquarters, it wasn't discussed much.

> **"Unfortunately, certain youth organizations inadvertently provide the child molester with almost everything necessary to operate a child sex ring. A scouting organization, for example, fulfills the sex offender's needs for:**
> **1. access to children of a specific age or gender.**
> **2. a bonding mechanism to ensure the cooperation and secrecy of victims, and**
> **3. opportunities to spend the night with a victim or have a victim change clothing.**
>
> **The bonding mechanism of the Scouts is especially useful to the offender. Loyalty to the leader and the group, competition among boys, a system of rewards and recognition, and indoctrination through oaths and rituals can all be used to control, manipulate and motivate the victim.**
>
> From "Child Sex Rings: A Behavioral Analysis," by FBI special agent Kenneth V. Lanning, the agency's expert on child abuse.

"It was a shame that nobody here talked a lot about it," Mr Anglim said. All confidential files on adults banned from Scouting passed through Mr Anglim, Mr Ernst and Scout attorney David Park.

In 1984 — the last year for which all the files on sex abuse in the Boy Scouts are available — the organization banned 36 men for sexual misconduct. In some years, about one of every four men banned from Scouting are banned for that reason.

Mr Ernst and Mr Anglim said they never examined the cases and never discussed whether sex abuse was a significant problem.

Mr Ernst said the number of cases didn't seem high since the Scouts had more than 1 million adult volunteers.

So the cases were not reported to the Scouts' health and safety committee, which got reports about injuries and safety hazards in troops and helped create programs to protect boys.

Through the 1970s and 1980s the committee created programs to promote water safety and seat belt use. It even studied the safety of the gunpowder that troops used in muskets for America's Bicentennial celebration.

In a 1987 deposition, committee chairman Dr Walter Mensinger and Scout officials never gave the committee any reports about sex abuse, although they routinely gave the committee tallies for other injuries. He was sure that if sex abuse was a problem in Scouting he would be told about it, he said.

He said Scout officials didn't mention the problem "until the recent spate of lawsuits," when they asked him to testify as an expert witness to defend the corporation.

•••

Besides wanting to protect the corporation, something embarrassed to the silence over abuse. The men running the Boy Scouts had trouble believing some men join troops to have sex with boys.

"Here we are, an organization chartered by Congress for the best program of Americanism and country and God. We did not feel originally that this could embrace our organization," Mr McAllister said. "It took a long time to be alert to the fact that child molesters are everywhere."

There were warnings. A New Jersey social worker investigated abuse by a Scoutmaster in 1980 and wrote a report urging the Scouts to develop better screening of volunteers. "It is recommended that Scouts be educated regarding abuse and abusive situations," the social worker wrote.

The report is in the Scoutmaster's confidential file at national headquarters.

Also around 1980, leaders of Big Brothers talked to the Boy Scouts about working together to fight sex abuse. The Boy Scouts said they could not share their confidential files and saw no reason for any joint efforts.

"I went to the Boy Scouts and sought some help from them, thinking we could come out of the meeting and get our heads together," said Donald Wolff, then a legal consultant to Big Brothers. "We met a brick wall. The Boy Scouts were pretending there was no problem. We knew the Boy Scouts had as big a problem if not bigger than we had."

•••

Parents have expressed similar frustrations. After Scoutmaster Carlton Rittenbender was arrested in 1985 for molesting boys in his Reston troop, some parents formed a committee to urge the Scouts to create a better system for screening volunteers. Rittenbender had joined the Reston troop while on probation for molesting Scouts in Rhode Island.

National Scout officials met with the parents but said there was little they could do, recalled Judy Etheridge, whose son was in the troop but was not molested.

"The whole time we were trying to talk with them, they stonewalled," Mrs. Etheridge said. "They refused to acknowledge that they had to take a harder ship role to that. We really felt that they had to, that the Boy Scouts of America had to come out and say this is going on, we will not allow it.

"I really couldn't believe that they would prefer to pretend it didn't happen."

Scouting environment offers 'petri dish for sex abuse'

When police raided the homes of three New Orleans Scout leaders in 1970, they found an unusual array of

it that way. They wanted Scouting to provide strong male role models for

1976, they found an unusual array of literature: stacks of magazines with names like "Naked Boyhood" and "Boys for Sale."

That was just the beginning. The Scout leaders, police found, were part of a national child sex ring that recruited boys for sexual activities and traded photos of boys and there are acts. Eventually, 17 men were charged, the three Scoutersmasters were convicted. The troop disbanded.

The case shocked the community and illustrated what Scout officials and child abuse investigators have known for decades: The Boy Scouts are a magnet for men who want to have sexual relations with children.

"The Scout leader is not the only position that a sex offender can take, but it is an ideal one for a pedophile," Dr. Gene Abel, an Atlanta psychiatrist, testified in a 1988 lawsuit involving a Virginia Scoutmaster.

Other children's groups, like Big Brothers, draw pedophiles. But the founders of the Boy Scouts, while building a movement that has helped millions of boys, inadvertently created an environment that one therapist calls "a petri dish for sex abuse."

It's been that way since the first official Boy Scout camp opened in England. One of the first men put in

"It is very much a problem because that is very much part of Scouting — isolation, separation of leader with child . . .

charge of the camping field was also accused for sexual misconduct with boys, records and sources show.

Pedophiles join the Scouts for a simple reason: it's where the boys are.

The famous bank robber Al Capone was once asked why he robbed banks and he answered: "Because that's where the money is," wrote Scoutmaster William Wester of Colorado Mid., in a 1983 sex abuse presentation to other Scoutmasters. "A similar point could be made about why sex offenders may gravitate to Scout troops."

They don't always join just for sexual gratification, however. Dr. Fred Berlin, co-director of the sexual disorders clinic at Johns Hopkins University Hospital, said many pedophiles truly love boys. They join

"We've always felt been probably a little safer than just society in general because of the fact that we have given some thought about what the quality of the leadership should be."

Scout administrative director Joseph Anglim, November, 1990 interview

Scouts or similar groups to be near them. Testifying in a 1986 sentencing hearing on Carlton Bittenbender, a Virginia Scoutmaster convicted of sex abuse, Dr. Berlin explained it with an analogy.

"If you take this average college guy who is attracted sexually to females, you will find that that person tends to be gravitated towards situations where he can be in the company of females he considers to be attractive. He may be interested in sexual involvement indeed but he may also have a genuine affection and liking for those types of people."

Two former Scout leaders can recall abusing boys and in interviews that they became volunteers because they enjoyed Scouting as boys and liked children. Using troop members to satisfy sexual urges "didn't enter my mind at first" said one leader, John Fitzgerald of New Jersey. "After a while, it did."

He usually had sexual relations with boys at camps — the most common setting his abuse in the Scouts. "It is very much a problem, Dr. Abel testified, "because that is very much part of Scouting . . . isolation, separation of leader with child, off-away some place away from parents, away from other adults."

Scouting gives pedophiles a legitimate reason to be with boys. A Scoutmaster sees the boys once a week at troop meetings and more often at work on merit badges. Many times the relationship grows very close, as the man takes the boy to movies and games and becomes a father figure.

The founders of Scouting wanted

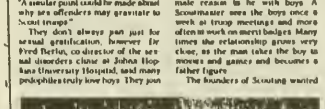


Photo by Ruth Fremson, The Washington Times

Boys Scouts march to opening ceremonies in their annual Jamboree

boys, especially boys with no fathers.

When Catherine Pollard of Connecticut tried to become the country's first woman Scoutmaster, the Boy Scouts fought hard. Boy Scout official Joseph Bertan told a state human rights panel in 1983 that a Scout must be "closely and intensely related to an adult male Scout master. That Scoutmaster practically lives with the boy . . . He becomes the counselor and guide for that boy to help him through life."

Today, women can be Scoutmasters, but the vast majority are men.

There is no doubt that thousands of fatherless boys have benefited from such intense relationships with their Scoutmaster. But such relationships are easily abused, the man can convince the boy that sexual activity is part of their love for each other or part of the boy's education. Time and again in cases where Scout leaders have molested boys, the leader is described as a father figure, big brother or role model for a child whose father paid little attention to him or was absent altogether.

"I used to spend a lot of time at his house because of my problems at home," said a police statement from a 13 year-old boy molested by Bittenbender while he was a Scoutmaster in Rhode Island. He was acting like a sub father."

After Bittenbender gained a troop in Reston, one woman implored him to spend more time with her boy. The boy's father was homosexual and, in her eyes, unfit as a male role model. So she would drive her son to the Scoutmaster's house and leave. They would have sexual relations, she thought they were studying English.

Adding to the molester's arsenal is his authority as Scoutmaster. "It is a position where you have an adult figure wearing a uniform," said Ned Reilly, an attorney for a boy molested by his Scout leader in Tallahassee. "These kids never in a million years think the guy would do something wrong."

To get that authority, sometimes all a child molester has to do is volunteer. "If someone says I'm going to be the leader, you've got 11 people who breathe a sigh of relief and say, 'I'm not gonna have to attend those meetings,'" said James Tarr, the ex-tions former Chief Scout Executive.

As troop leaders, the men have an obedient and loyal following. It's in the Scout Law. Of course, Scout officials don't want a boy to obey a man who's trying to molest him. But many boys don't know that unless told, most boys aren't told much about sex abuse.

In a 1987 article in Redbook Dr. Abel quotes a mother whose boy was molested by a Scout leader named Mr. Taylor. "When I think of what I used to say every week when I dropped Peter off at his Cub Scout meeting. I'd say, 'Goodbye Peter. Be sure to have a good time. You be sure and do what we like Mr. Taylor says.'"

Lord Robert Baden-Powell staff in hand sits with Scouts at a 1924 international campout near London

Baden-Powell diary entries reveal Scout founder's affection for boys

If the father of the Boy Scouts ran a troop today, he could get kicked out as a potential child molester.

His diaries and letters say he enjoyed photos of nude boys and admired their bodies at swimming holes.

There's no evidence that Lord Robert Baden Powell, the British war hero who started the Scout movement in 1908, had sexual relations with children. But some people believe the man who founded the world's most popular youth movement was a pedophile who kept his sexual desires in check.

"Baden Powell was in a position of public trust that made watching the only way to satisfy his interest," Tim Jeal wrote in a 1989 biography of the Scout founder.

"I have no reason to believe it's anything more than conjecture," said Joseph Anglim, administrative director of the Boy Scouts of America.

The Boy Scouts let The Washington Times view Baden Powell's diaries and other writings on microfilm at Scout headquarters in Irving, Texas. The Scout Associations of the United Kingdom sent copies of other writings.

The diaries in Texas include this entry from Nov. 13, 1919: "Stayed with Pat. Pat's photos of naked boys and trees excellent."

Three days later, according to a letter on file with the Scout Association: Baden Powell wrote asking to visit Ali. Pat again. He closed by saying, "... and possibly I might get a further look at those wonderful photographs of yours."

In other diary entries Baden-Powell writes enthusiastically about watching naked boys, commenting on July 9, 1932, about "the delightful sights ... esp. at the swimming pool." At an early Scout camp in England, he encouraged boys to swim nude and liked to talk with them after they would "get over it just as they would get over the measles."

He advised boys to get married so that they could produce children. Baden Powell married at 55 and fathered three children.

John Fogg, spokesman for the Scout Association, said the group does not dispute anything Mr. Jeal wrote.

Mr. Jeal contends that Baden-Powell channeled his sexual desires for boys into creating the Boy Scouts. He stressed that whatever his desires were, he did a great amount of good with his work.

On that, at least, the Boy Scouts of America agree. A huge painting of Baden Powell covers a wall just off the lobby at Scout headquarters. Scout handbooks and boys about him, and his likeness appears on mugs and other souvenirs.

The Scouts today are especially skittish about leaders showing a physical interest in boys. Mr. Anglim was asked what the Scouts would do with a leader who enjoyed looking at nude boys or photos of nude boys, but never touched children.

"We would throw him out," Mr. Anglim said.

His diaries and letters say he enjoyed photos of nude boys and admired their bodies at swimming holes.

"would clearly have a pedophilic orientation in the fact that he's erotically aroused by children." He said, however, that if he didn't act on those feelings, they would simply be private fantasies and wouldn't require treatment.

In fact Baden Powell cautioned even against letting these feelings for boys evolve into physical relations ships. Writing in 1933 about a Scoutmaster who went to jail for sexual activity with boys, he said, "I had the law allowed it one would have been glad to see a flogging inflicted"

As he women, Baden Powell found their bodies "repulsive," and he often warned boys about "girl ills," Mr. Jeal said in an interview in "Reverting to Success," a book published in 1922, Baden Powell warned boys about "the rutting season," when they would find themselves hearing for females. He wrote that it would last a few months, and they would "get over it just as they would get over the measles."

He advised boys to get married so that they could produce children. Baden Powell married at 55 and fathered three children.

John Fogg, spokesman for the Scout Association, said the group does not dispute anything Mr. Jeal wrote.

Mr. Jeal contends that Baden-Powell channeled his sexual desires for boys into creating the Boy Scouts. He stressed that whatever his desires were, he did a great amount of good with his work.

On that, at least, the Boy Scouts of America agree. A huge painting of Baden Powell covers a wall just off the lobby at Scout headquarters. Scout handbooks and boys about him, and his likeness appears on mugs and other souvenirs.

The Scouts today are especially skittish about leaders showing a physical interest in boys. Mr. Anglim was asked what the Scouts would do with a leader who enjoyed looking at nude boys or photos of nude boys, but never touched children.

"We would throw him out," Mr. Anglim said

The Washington Times

SCOUTS HONOR

Boy fled terror, shame by suicide

By Patrick Boyle
THE WASHINGTON TIMES

Christopher Schultz was 12 when he decided his life had been too hard for too long. So one spring evening in 1979 he stepped into the bathroom of his family's suburban New Jersey home, opened the medicine cabinet and picked out the little bottle marked "oil of wintergreen."

Christopher took off the cap, put the bottle to his lips, threw back his head and drank. "That tastes awful," he mumbled when he got back to his bedroom, where his mother had been sitting with him watching TV. His breath smelled like mint mouthwash, she recalled, but Christopher would not say what he swallowed.

Christopher Schultz was forced into sadomasochistic acts.

Margaret Schultz had reason to be worried. For seven months the Schultz residence had been on suicide watch, ever since Christopher said "Brother Edmund," his teacher and Scoutmaster, had been forcing him into sadomasochistic sex acts.

Mrs. Schultz rushed to the bathroom and found the two-ounce oil of wintergreen bottle three-quarters empty. Christopher spent the night in a hospital. The next day he was dead.

America's most revered institutions — the Boy Scouts of America and the Catholic Church — can escape liability.

"What happened to Christopher was a hot bike going through rope, in that he felt tainted," Mrs. Schultz said. "And I think the whole family absorbed that feeling. We all felt tainted."

In more than 400 sex abuse cases in the Boy Scouts over the past 19 years, at least three other Scouts tried suicide, as did at least three Scout leaders who were charged with abuse, according to a study of cases by The Washington Times. However, because many of the files released showed scant information, it is not certain those are the only suicide attempts or that Christopher was the only one to succeed.

He and his family lived in a spacious house on a quiet street in Emerson, N.J., just outside New York. Mr. Schultz was a salesman in the computer industry; Mrs. Schultz was a nurse. The family went to the Assumption Catholic Church and the boys went to the Assumption School. That's where they met Robert Coakley, known as "Brother Edmund."

Mr. Coakley was a Franciscan brother, a teacher and Scoutmaster of the church's troop — a considerable authority figure in the eyes of boys and parents alike. Some thought he was a bit odd, Richard said, because he dressed sloppy, smelled a little and collected guns. But he seemed trustworthy, he had been to the Schultz house several times, and Mr. Schultz went along with him on Scout campouts.

Richard was the first to be frightened by Brother Edmund. It was Memorial Day weekend of 1978, when the Scoutmaster took Richard, 13, to a camp in Upstate New York to prepare it for a visit by the troop. Other boys were supposed to go along, but Brother Edmund said they canceled.

That weekend, Richard said, Brother Edmund conned him into posing in a sheet for Polaroid pictures to simulate the stations of the cross, tied his hands behind his back one night in the trailer, but he eventually untied the boy, went to bed and masturbated.

Richard didn't understand then that Brother Edmund was trying to molest him; he just knew something happened was wrong. A naturally withdrawn child Richard was even more withdrawn after that weekend.

> **"It [a Scout troop] becomes a petri dish for sexual abuse. It's a coming together of forces that greatly increase the odds of sexual abuse happening. You tend to have boys who are attracted to the Scouts, and organizations like Big Brothers, who are a little bit more predisposed to be victims because they're really looking for male role models. And you have Big Brothers or Scout leaders who are predisposed to be perpetrators. So it's a great combination."**
>
> – Courtney Pullen, a Denver psychotherapist. He founded a self-help group called Males Affected by Sexual Abuse, and has treated several men who were molested by Scout leaders.

"Brother Edmund" (Robert Coakley)

Mr. Coakley was a Franciscan brother, a teacher and Scoutmaster of the church's troop — a considerable authority figure in the eyes of boys and parents alike. Some thought he was a bit odd, Richard said, because he dressed sloppy, smelled a little and collected guns.

He had invited Richard, too. "Because of what happened on Memorial Day weekend, I didn't want to have anything to do with it," Richard said. But Richard worried about his brother.

"I kept trying to tell him not to go," he said. "It was like a hint I wouldn't come out and say, 'Listen, this is what he did to me.' " Panicked, Richard took a bow to the camp days later.

By then the troop was there, too, and Christopher's mood had changed. Richard said his brother kept fighting with him and the other boys, which was unusual for Christopher, a comfortable family dinner. You couldn't speak with him. He was the way you would see an older teenager who was really getting nasty."

The sexual relationship with Brother Edmund continued at school. One day that October, according to a lawsuit filed by the Schultzes, Brother Edmund asked Christopher to help him paint the school gym, then locked the doors, made the boy tie him up and beat him with "a rope that had many ends to it," like a cat-o'-nine-tails.

Days later, under prodding from his mother, Christopher told. "He said, 'I know you won't believe me and you'll think I'm terrible,' " Mrs. Schultz recalled. "Sickeningly enough, he didn't have to say too many sentences for me to realize what was the problem. Then I remembered how Richard had acted differently. Maybe things that I hadn't wanted to think, clicked."

Mr. Schultz said he felt "nearly emasculated. You're looking to protect them. Then something this dev estating happens right under your nose. You're just been stripped naked."

The church dismissed Brother Edmund from the school and the troop. The Schultzes all went to counseling. And, in what they admit was a mistake, they reported nothing to police. They said they wanted to keep it quiet, and that church officials pledged to pay for Christopher's therapy.

For months Christopher was in and out of hospitals and therapists' offices, his troubles exacerbated by a football injury that damaged a kidney. It seemed he had always been struggling at age 2 he was hit by a car and for years he suffered from hyperactivity.

Now Christopher was embarrassed and terrorized. He said Brother Edmund had threatened to kill him if he told anyone what they did together. Christopher had hallucinations, thinking Brother Edmund was coming at him.

The Schultz home was tense. Christopher talked about suicide and made several attempts, albeit feeble, like trying to cut the top of his wrists with a plastic knife. Nevertheless, therapists said "we could lose him at any time," Mrs. Schultz said.

The family went on round-the-clock watch. They tried to keep sharp objects and drugs beyond Christopher's reach. They listened to his footsteps around the house, wondering what he was up to. Everyone tried to be nice to Christopher, even when he seemed to be egging them into fights.

"We were walking on eggshells," said Richard. Deep down, he and his parents thought Christopher was just trying to get attention. "I never thought he would actually pull it off," he said.

Even when Christopher swallowed the oil of wintergreen on May 28, 1979, they got him to the hospital and thought he would be OK. Oil of wintergreen is used as a liniment and in very small doses as flavoring in some drugs, but when taken straight but much the same effect as an aspirin overdose. It can cause a person to hyperventilate, develop a fever, collect lung fluid and go into a coma.

"A teaspoon of oil of wintergreen is equivalent to 21 regular strength adult aspirin tablets," said Dr. Toby Litovitz, director of the National Capital Poison Center at Georgetown University Hospital.

Mr. Schultz, Mrs. Schultz and Richard said they never figured out how the bottle got to the house.

Christopher was buried in his Boy Scout uniform, with his funeral as was said to be strong his parents. No one paid much attention to him.

The Schultzes decided to pre charges against Brother Edmund who had moved to Phoenix, where his mother lived. Police said the case was too much because the only wi ness, Christopher, was dead.

So the family sued the church and the Scouts over Christopher's abuse and death. It appears to be the first lawsuit involving sex abuse ever

He said Brother Edmund had threatened to kill him if he told anyone what they did together.

filed against the Boy Scouts. Since then, about 30 similar cases have been filed.

When the lawsuit made headlines in September 1980 — almost two years after Brother Edmund left the church and the troop because of the alleged sex — the local Scout council sent the nerves to several board quarters, along with information about Brother Edmund, to ban him from the Scouts.

But the lawsuits died over a law called "charitable immunity," which bans most lawsuits against charities over the actions of a volunteer.

The case went to the New Jersey Supreme Court, which ruled 4-3 that the Catholic Archdiocese of Newark was immune from the lawsuit. The family sued the Boy Scouts in New York, where the camp was. The State Supreme Court ruled 3-2 that the case belonged in New Jersey.

Mr. Schultz often traveled to Colorado on business and was tempted to swing down to Phoenix "to finish things off" with Brother Edmund. If a child of his were sexually abused today, Mr. Schultz said, "I would while I were in a highly emotional state, go down and take care of the individual first and let the law straighten it out later."

Eventually Mrs. Schultz moved out of the house. She had taken Christopher's death harder than anyone. The hospitalizations, the suicide, the guilt, the trips to the counselors, the criminal investigation and the lawsuit had sapped the strength from their marriage.

"Individuals grieve differently," Mr. Schultz said. "My coping mechanism was to say yes, it happened. To bury it. My wife couldn't let go of it. It just drove us apart."

"They could no longer keep each other up like they used to," Richard said. "My father would look at my mother and see her getting depressed, and it would remind him of his failure as a husband and a father.

Pretty soon, no one the family Mrs Schultz, her husband, Richard, and their surviving son, Richard Jr, were blown apart by guilt and anger over Christopher's abuse, then his suicide

This is a story about a Boy Scout who committed suicide after being abused by his Scoutmaster. It is also the story of how one abuse can wreck a family, how an abuser can escape charges, and how two of more or when he came home. He said nothing to his parents.

"At that time we didn't put any thing together other than he had had his back up," Mrs Schultz said. "And it wasn't unusual for him."

Weeks later, Mr Schultz and Rich ard dropped 11-year-old Christopher off at the camp, again to help Brother Edmund get ready for a Scout trip. Again, Brother Edmund said the other boys canceled

prey. "He will becoming a problem child," Richard said. "He kept say ing, 'If you only knew what hap pened up here.' He kept hinting at things happening."

Back home, Christopher, an emo tional child by nature, grew more hurtful. The parents couldn't fig ure out why.

"Every indicator told you some thing was really wrong," Mrs Schultz said. "You couldn't have a

Eventually, Christopher would say that Brother Edmund made him sleep in his trailer at camp, wear flimsy underwear and engage in simulated rape scenes.

This is where the guilt starts.

"I put a tremendous guilt trip on myself," Richard said. "My parents, of course, being parents, said, 'We should have known.' But I'm the one that set up the ref that was hired and he did the stuff. If I had only opened my mouth. I could have prevented it."

Assumption. His death launched the family in a new level of guilt and anger.

"My son was home in my care," Mrs Schultz said. "I'm a profes sional nurse. And while he was in my care, he managed to take stuff that killed him."

"As a parent, you faded," Mr Schultz said. "The bottom line is, you lost a child."

Richard felt both guilty and re sentful. He was told to be under standing through his brother's trou bles, then when his brother died,

They came to the realization that the only way either one of them were going to survive was to get a de vorce.

Mr Schultz sold the house. He and Mrs. Schultz have since married other people.

In 1988, Brother Edmund died. His four-sentence obituary in the Arizona Republic did not list a cause of death. His funeral was to a non denominational chapel, and he had an immediate survivors.

Richard Jr. is married now. Last summer, he and his wife had a baby. They named him Christopher.

Grilling in court abuses boys again

In a foggy Island courtroom on Valentine's Day, a 13-year-old boy sat on a witness stand, held out his right hand like he was holding a glass, and slowly pumped it up and down. That, the boy said, was how his Scoutmaster used to fondle him.

With his left hand, the boy pointed to his molester — Robert Izzo, the man at the defense table.

With prodding from a prosecutor, the boy described an orgasm.

Out in the hall his mother knelt on the hard floor, her ear pressed to the courtroom doors, trying to hear her son. Because she would testify next, she wasn't allowed inside.

It's been horrible," she said later. "You want to be there for the kids, but you're there to protect your child."

She wanted to protect him from Anthony Capetola, who seemed like

The jury convicted Izzo on 35 counts of sex abuse involving four boys, three of them Scouts, who testified against him.

a nice man but who was also Izzo's attorney. He tried to pick the boy's story apart, and the boy grew weary and irritable.

Why, Mr. Capetola asked, did he first tell police that Izzo never touched him? Why did he once claim that Izzo had unfastened his pants, only to say later that he had been wearing sweatpants with no buttons? How many times of seats were on the bus where he was allegedly mo lested? Who else was on the bus? Which seat was he in?

"I don't remember!" the boy said slowly, displaying the annoyance of a child who thinks a grown up is nag ging. "I don't know!" he said at other times, shrugging his shoulders and slumping in his seat. Where the boy had been confident in the morning

by afternoon he was tired and defen sive.

Izzo's trial, which ran from Feb. 11 to 27 this year, illustrates why it is so difficult to prosecute child mo lesters. The children and their par ents, it's an embarrassing and tense ordeal, many decide it's not worth the risk.

But the case also showed that sometimes the risk pays. The jury convicted Izzo on 35 counts of sex abuse involving four boys, three of them Scouts, who testified against him. The jury apparently believed the boys over the 41-year-old Izzo, who took the stand and said the boys lied.

At least one of the boys didn't want to testify. "He was upset," his father said. "He said, 'No, I don't wanna do that. We said, 'Do you want him out there doing it to other chil dren?' "

That boy was the first to take the stand against Izzo in the Nevada courtroom. He, too, was 13. He looked calm but not comfortable. He sat with his shoulders slumped for ward and his hands on his lap, as if bracing against a wind.

His first few minutes were eased by the gentle questioning of Miss raven Riordan, the Nassau County as sistant district attorney. The boy tried to answer everything with "yeah" or "no," although he some times had to describe precisely what Izzo did to him.

Two years earlier, the boy said, he slept at Izzo's house after a troop camping trip was rained out. There on the couch he said, Izzo fondled him and performed oral sex on him.

Then came cross examination by Mr. Capetola, a tall, bearded man. He wanted to show that the boy's memory was weak or that he was lying. That's a delicate task for a de fense attorney, who must try to at tack the child's credibility without looking like a bully.

"You have to be very careful and

Photo courtesy of Newsday

Robert Izzo 41, stands motionless as he hears the jury's guilty verdict on 35 counts of sexual abuse

try to move delicately so as not to make it that you're trying to badger a child witness," Mr. Capetola said during a recess. "With a child wit ness, you've got to go gentle for more or less, rather than coming in with the bludgeon."

So there were no dramatic mo ments or heated exchanges between the boy and Mr. Capetola. Those would be saved for adult witnesses.

The defense lawyer quizzed the boy patiently and politely, but his voice was loud and firm. He focused on changes between what the boy told police when the sex abuse investiga tion began more than two years ear lier and what he later said in court.

Two years earlier, the boy signed a police statement that said, "He never touched me on any camping trips."

"Was that true?" Mr. Capetola asked.

"No," the boy said meekly.

"Who lied to the detective as that point in time?"

"Me," the boy said.

The next boy to testify against Izzo had also initially told police that Izzo didn't abuse him. Child abuse experts say it's common for chil dren, especially boys, to deny being abused, because they're embar rassed and think they'll get in trou ble. Defense attorneys argue that children sometimes make up stories about abuse, partly because it seems to be what the adults want them to say.

A trial like this forces the children to explain why they didn't tell anyone at first. "I was embarrassed. I was afraid," a boy explained under ques tioning by Miss Riordan.

And by the end of the day, he was tired. For the two boys who testified Feb. 13 and 14, the trial was an emo tional and physical marathon. Each boy got to the courthouse about 9, took the stand about 10:30 and fin ished testifying just before 3:30. Less than half that time was spent testifying; the rest was taken up by conferences between the judge and lawyers, recesses and lunch.

It made the boys weary talking about sex acts, repeatedly answer ing the same questions, being quizzed about details they couldn't recall. By afternoon they were fidg eting and sounding testy.

"I'm so tired," one boy told friends during a recess.

A few friends and relatives tried to help. They sat in the front row while the boys were on the witness stand, like a silent cheering section. During recess they told the boys, "You're doing great." While the judge and lawyers privately talked over a legal dispute, one boy's sister walked to the witness stand, rubbed her brother's back and chatted with him.

When they finished testifying, the boys walked briskly to pass their par ents in the hall. They did not look at Izzo, nor he at them, but the boys seemed relieved and proud. One had a bounce in his step as he left the courtroom.

"It's finally over," a boy told his father in the hall.

About a week later it was over for Izzo too. After less than seven hours of deliberation the jury convicted him on all counts. That apparently convinced him not to go through an other trial on similar charges. Izzo on with he pleaded guilty to 35 counts of sex abuse involving children on a kindergarten bus he drove.

On May 7, Izzo was sentenced to 20 to 60 years in prison.

The payments range from $1,000 to more than $1.5 million for each child, according to court records and people involved in the cases.

The actual payout total is probably well above $15 million because the Scouts sometimes agreed to pay

Such agreements, sometimes called "hush money," are common in child cases.

"They don't want any publicity," said a lawyer who settled with the Boy Scouts on a sex abuse case. "They said, 'We don't want any dis-

Texas [illegible] where [illegible] pleaded guilty [illegible] pleaded in sex abuse suits. One was in Oregon, where in 1987 a jury awarded a boy $4.2 million. That award was slashed on appeal, and the Scouts' share of the final award

might be molesting boys, how often the boy was molested, and whether [illegible] on Boy Scout property or during Scout functions.

The Boy Scouts, of course, are prepared they are self-insured, and at the end of 1989 their insurance

[illegible] The Scouts say their insurance covers the troop sponsors as well as the national corporations. So if someone wins a suit against a local Lions Club that sponsors a troop, the Boy Scouts' national office says it will pay

civil cases against Scout leaders around the country, the liberal lawyers learn about the strategies some county-wide suits against the Scouts and devise the best defense.

An attorney who has worked with the farm on Scout cases said that Mr. Jane "flies around the country bird-dogging local counsels that represent the Scouts. He brings them up to speed. He'd say [a lawyer] made this argument in Oregon, here's what we think you should say in response. He's looking over their shoulders and giving them all the advice he can."

Molester at bottom of prison hierarchy

It didn't take long for the other convicts to give child molester Carlton Bittenbender a pet name. They let the Molester. And after a few weeks in state prison, the inmates' taunts and threats sent Bittenbender pleading for mercy.

He sat in his cell and wrote to a police warning, "Justice will not be served by my mutilation or death."

"Your honor, never having been in prison before . . . I didn't realize I was being sentenced to day upon day of meaningless activity . . . to days of threats, intimidations, unbearable noise, fights and almost non-human animal-like behavior."

In February 1986, Judge Howe Brown of Fairfax County Circuit Court had sentenced Bittenbender to 40 years in prison after Bittenbender pleaded guilty to molesting three Boy Scouts. Ten weeks later, Bittenbender wrote:

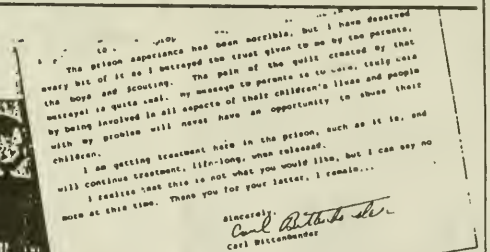
"Your honor, never having been in prison before . . . I didn't realize I was being sentenced to day upon day of meaningless activity accomplishing nothing . . . to days of threats, intimidations, unbearable noise, fights and almost non human animal like behavior."

Bittenbender had reason to be scared. Child molesters are at the bottom of the pecking order in prison, preyed upon by other inmates who — despite their crimes against adults — think that a man who has sexual relations with a child is hardly a man and deserves to be abused himself.

Bittenbender thought he'd serve time at the Buckingham prison, which has a treatment program for sex offenders and has many sex offenders in the population. But after he got to the prison system's classification center for assignment, it appeared he was going to a regular state facility.

"It has been made crystal clear by many experienced inmates here that sex offenders at those institutions

Carlton Bittenbender, pictured in a yearbook photograph from Coginchaug Regional High School, in Durham, Conn., was an English teacher when his students dedicated their 1974 yearbook to him and another teacher.



The prison experience has been horrible, but I have deserved every bit of it as I betrayed the trust given to me by the parents, the boys and Scouting. The pain of the guilt created by that betrayal is quite real. my message to parents is to warn, truly care by being involved in all aspects of their children's lives and people with my problem will never have an opportunity to abuse their children.

I am getting treatment here in the prison, such as it is, and will continue treatment, life-long, when released.

I realize that this is not what you would like, but I can say no more at this time. Thank you for your letter, I remain...

Sincerely,
Carl Bittenbender

cc: Yeager, file

"Incredibly, stupidly, I walked back into [a troop], like walking back in a bar, like an alcoholic walks back in a bar, thinking that I am in total control of myself."

Convicted child molester and former Scoutmaster Carlton Bittenbender of Virginia

sex raped, tortured, burned or at worse [sic] killed when discovered. Already inmates from Fairfax have labelled me 'Chester the Molester' and I have had many confrontations denying those allegations at tempting to defend myself against vicious to date verbal assaults."

"Please your honor allow me the chance to get to Buckingham so I'll be safe and on the program you mandated."

Bittenbender was sent to a prison in Staunton, which has a treatment program and does not house the dangerous prisoners found in maximum security facilities. "You're out with the rough crowd in Staunton," said Scott Richardson, a corrections department manager.

Bittenbender rejected a request for an interview but did write a letter to The Washington Times in October. "The prison experience has been horrible," he wrote, "but I have deserved every bit of it as I betrayed the trust given to me by the parents, the boys and Scouting."

Victim has anger with a vengeance

For at least one of Carlton Bittenbender's child victims, there is solace in imagining that Bittenbender is being raped by his fellow inmates. The only thing better, the boy fantasizes, would be to kill the man himself.

Many children who are molested by adults think about maiming or murdering their molesters. Lawyers found that out when they came to talk to "Infant C", a Reston boy whose parents sued Bittenbender for molesting their son. The boy, who was 12 when he and Bittenbender began their sexual relationship, was 18 when he appeared for a deposition in February 1988.

A lawyer for the Boy Scouts, Barry Bach, asked the boy how the abuse affected him. After describing problems with adults, girls, school and the law, the boy turned to Bittenbender.

"I talk about killing Bittenbender and think about it a lot," the boy said.

"How frequently do you think about Bittenbender?" Mr. Bach asked.

"Every day."

"You think about wanting to kill him?"

"Yes."

"Doesn't the fact that he's in jail make you feel any better?"

"Yes, because it . . . he's probably getting raped every day."

"And you derive satisfaction from that thought?"

"Yes."

"Even age boys often talk tough, but this one went beyond talk. He admitted that after Bittenbender's conviction he was caught with a Browning 9mm semi-automatic. He told lawyers, "It was a good deal. And I'm worried that Bittenbender's going to get out of jail." He began making pipe bombs and was arrested for blowing up a mailbox.

Later in the deposition, Mark Yeager, the attorney for Bittenbender, also asked the boy about his feelings toward his former Scoutmaster.

"If he were sitting here right now . . . what would you say to him or what would you ask him?" Mr. Yeager asked.

"I would tell him I was going to kill him," the boy said.

"And if he asked you, well, don't you know that this is a business and that I couldn't help myself and I owned no malice toward you, why do you want to kill me, what would your response be?"

"I'd say it's tough luck. You've been doing this your whole life. And now you're dead."

Abuser finds troop by door-to-door canvassing

In the spring of 1989, parents all over Lantana, Fla., were opening their front doors to find Michael Loch standing there smiling. The 26-year-old fast food cook said he was forming a Boy Scout troop, all he needed was boys.

Great idea, some parents thought. So did Pull Hodge, a Scout official who oversaw troops in Palm Beach County. He helped Loch recruit boys from local schools.

"He seemed like any other sunburn wearing volunteer," Mr. Hodge would say months later. "Nice fellow."

Loch became more than a Scout master for the boys of Troop 203. He took them to dinner, he took them to movies, he took them bowling. He took them to his apartment, where he fondled them and masturbated in front of them, according to police who arrested him that August.

. . . when a judge asked Loch for his opinion of the plea bargain that gave him a six-year sentence, Loch smiled and said, "I can live with that."

It is one of at least four cases where men apparently formed troops to get boys for sexual gratification. Other cases were uncovered in Louisiana in 1976, Georgia in 1977, and California in 1984.

Loch pleaded guilty to molesting two of his Scouts. According to the Palm Beach Post, when a judge asked Loch for his opinion of the plea bargain that gave him a six-year sentence, Loch smiled and said, "I can live with that."

SCOUTS HONOR

Defense lawyers' strategies pose boys as willing victims

If a Boy Scout has sexual relations with his Scoutmaster, is it the boy's fault?

Boy Scout officials say no, but Boy Scout lawyers sometimes say yes.

That's one of the legal strategies used to defend the Boy Scouts of America in suits brought by families of abused boys.

The lawsuits have thrust the Boy Scouts of America into an ironic role: Scout lawyers, trying to save the corporation millions of dollars, have asked former Scouts if they enjoyed sex with their leaders, have said the boys freely chose to have sex with the men, and have attacked the drinking habits and sex lives of one boy's parents.

This shows why child sex abuse cases are so difficult for children and their parents and so distasteful for lawyers and judges. Some of the Boy Scout strategies are standard legal weapons that seem particularly gruesome when used on a molested child.

For the Scouts, a weak defense can be expensive. In the past five years the Boys Scouts of America and their local councils have paid or agreed to pay more than $15 million in damages to boys abused by Scout leaders or employees.

These are some of the arguments the Scouts use in cut-their losses, as revealed in pre-trial motions, depositions, trial testimony and court room arguments from lawsuits around the country.

• Contributory negligence — This is a common strategy in liability suits, based on the theory that someone who claims to be a victim is partly responsible for letting something happen to him or for letting it go on. In several sex abuse cases, Scout lawyers have argued the boy is at fault for letting the abuse continue or for not telling anyone.

"All persons in our society have a responsibility to use reasonable care for their own safety," attorney Peter Chamberlain told an Oregon jury in the case of a boy molested by his Scoutmaster.

If it was voluntary - Related to contributory negligence, this argument says the boy voluntarily entered the sexual relationship and liked it.

In a deposition for a lawsuit in Virginia, Boy Scout lawyer Robert Cadigan asked the boy to describe an oral sex act that Scoutmaster Carl Rittenbender performed on him. Then he asked, "I take it you enjoyed that experience?"

"Yes, at that time," the boy said.

Several other times, the lawyer asked the boy if he enjoyed the sex acts. In his opening statement in the jury, Mr. Cadigan said, "This was entirely a voluntary relationship." He said the boy "offered an resistance whatsoever to Mr. Rittenbender, who kissed him and fondled his genitals."

• Family problems — While the lawsuits claim the boys suffered emotional and psychological problems because of sex abuse, defense lawyers will sometimes argue that the boys' troubles were caused by other factors, such as family problems.

This was a major part of the Scouts' defense in the Virginia case because one boy's father was homosexual and his mother had an affair with the Scoutmaster who abused her son.

"What kind of family is this?" Mr. Cadigan asked the jury. He told jurors that the boy's father "goes to gay Alcoholics Anonymous sessions."

This is a likely defense in sex abuse cases because child abuse experts say most victims of sex abuse are from troubled homes.

• The child wasn't hurt — Damage suits typically prompt both sides to present a parade of psychiatrists and other experts to debate whether the victim is really hurt. In sex abuse cases, the boy's attorney will claim the child has been traumatized for life, while defense attorneys will say the boy is well-adjusted. In a Florida case, experts for the Boy Scouts said the victim's mood swings and anxieties, such as his fear of being inadequate with girls, were normal for teen-agers.

• Charitable immunity — This legal doctrine gives charities immunity from most damage claims over the actions of volunteers. The idea by that charities deserve extra protection because they exist for the good of society and should not be held responsible for the actions of volunteers as companies are for employees.

Virginia is one of a few states that still have such a law. The Scouts used it in an unsuccessful effort in dismissal lawsuit in Norfolk and Fairfax.

• The Boy Scouts of America doesn't pick troop leaders — This is often the most crucial and complicated defense for the Scouts. The Boy Scouts of America, a corporation based in Texas, say they grant charters to groups around the country as form troops. Those sponsors run the troops and pick the Scout leaders, so the corporation cannot be responsible for bad leaders.

Lawyers for abused boys argue that the corporation maintains the right to reject and has unfit leaders and that it develops rules for selection of leaders and is supposed to make sure the rules are followed.

This defense strategy may at least shift damage awards from the national corporation to the local sponsors. Some lawyers think juries are not likely to levy big awards against churches and PTAs that sponsor troops. The Scouts say the sponsors are covered by the corporation's insurance.

Some of the Boy Scout strategies are standard legal weapons that seem particularly gruesome when used on a molested child.

Law firm bird-dogs on defense

When someone sues the Boy Scouts of America because a Scout leader sexually abused a child, a lawyer in Florida buys a plane ticket.

A Miami law firm coordinates the defense for all sex abuse cases against the Scouts, sending lawyers around the country to quiz boys who say they were molested, help local lawyers defend troops against law suits and watch criminal trials against Scout leaders.

Over the past three years the Scouts have paid the firm — Wicker, Smith, Tutan, O'Hara, McCoy, Graham and Lane — more than one half million dollars for that service, according to the Scouts' federal tax returns.

Faced with mounting lawsuits over sex abuse, the Scouts hired Wicker-Smith about four years ago to act as a clearinghouse for information on all the cases and to coordinate defense strategies. Wicker-Smith has extensive experience in liability law. It has represented General Motors, Exxon, McDonald's and Universal Studios.

Three lawyers at the Miami firm — Frank Lane, William Reese and Richards Ford — handle all the Boy Scout cases. Mr. Lane said The Scouts also hire lawyers at firms to defend each suit where it is filed, and Wicker Smith's job is to advise those firms. By suiting in on criminal and civil cases against Scout leaders around the country, the Miami lawyers learn about the strategies commonly used against the Scouts and

Faced with mounting lawsuits over sex abuse, the Scouts hired Wicker-Smith about four years ago to act as a clearinghouse for information on all the cases and to coordinate defense strategies. Wicker-Smith has extensive experience in liability law. It has represented General Motors, Exxon, McDonald's and Universal Studios.

Settlements exceed $15 million

The Boy Scouts have paid or agreed to pay at least $15 million in the past five years to settle lawsuits over boys who were sexually abused by Scout leaders, according to a study of 30 lawsuits against the Scouts.

The payments range from $12,000 to more than $1.5 million for each child, according to court records and people involved in the cases.

The actual payment total is probably well above $15 million, because damages only if the payments were kept secret. The Boy Scouts have settled almost 24 sex abuse suits out of court, and in most of those cases the settlement agreement is sealed and the families who sued agreed not to discuss the case.

Such agreements, sometimes called "gag orders," are common in civil cases.

"They don't want any publicity," said a lawyer who settled with the Scouts. "They don't want to be associated with the news media at any publicity arising out of this."

"Our interest is to protect the kid," said Joseph Anglim, director of risk management for the Boy Scouts.

A survey by The Washington Times turned up only two cases where trials actually were completed in sex abuse suits (the two in Oregon, where in 1987 a jury awarded a boy $2.1 million, and in 1988 a jury awarded a boy $2.5 million). The average award was $540,000.

The other case was in Virginia, where in 1989 a jury ordered a local Scout council to pay $43,000. The Boy Scouts had offered to settle for $1 million. The case is on appeal.

Lawyers said the Scouts' liability depends on several factors, such as whether Scout officials had early warnings that the Scout leader might be molesting boys, how often the boy was molested and whether the abuse occurred on Boy Scout property or during Scout functions.

The Scouts say their insurance covers the troop sponsors as well as the national corporation. So if someone wins a suit against a local troop, make sure the rules are followed.

This defense strategy may at least shift damage awards from the national corporation to the local sponsors. Some lawyers think juries are not likely to levy big awards against churches and PTAs that sponsor troops. The Scouts say the sponsors are covered by the corporation's insurance.

reserve stood at $61.9 million, according to federal tax records.

That reserve is used to pay claims over everything from sprained ankles to sex abuse to fatal accidents. About 700 claims and lawsuits are filed with the Boy Scouts each year, said Larry Potts, director of the Scouts' treasury division. He said the Scouts also have insurance coverage with private companies.

The Scouts say their insurance covers the troop sponsors as well as the national corporation. So if someone wins a suit against a local troop,

This transcript has not yet been checked against videotape and cannot, for that reason, be guaranteed as to accuracy of speakers and spelling. (JPM)

DAY ONE Transcript #115

June 14, 1993

FORREST SAWYER, ABC News: Good evening. I'm Forrest Sawyer and this is Day One Tonight, a Day One investigation reveals a secret about the Boy Scouts of America.

FORMER DELAWARE SCOUT: He liked little boys I was a little boy.

SAWYER: *(voice-over)* Day One uncovers files that show for decades the Boy Scouts have known about troop leaders who molest children.

BLAKE LEWIS, Boy Scouts Spokesman: One case is one too many.

SAWYER: Well, then, you've got almost a hundred on average a year. That's a hundred times worse problem. *(voice over)* They still don't want you to know about it.

KEN LANNING, FBI Pedophile Expert: There's no human being easier to seduce than an adolescent boy.

FORMER DELAWARE SCOUT: I mean, I have three children myself, and I wouldn't even have them in the Boy Scouts.

SAWYER: *(voice-over)* Justice in America: who can afford it?

MAN: The only way you can have justice in America is if you have money.

SAWYER: *(voice-over)* And if you don't, you get a public defender, fighting a system that's falling apart.

RICK TESSIER *(spl)*: I go to court every day facing overwhelming odds.

JOHN HOCKENBERRY, ABC News: What would the founding fathers say about the system?

Judge CALVIN JOHNSON: They would be absolutely appalled.

SAWYER: *(voice-over)* Also tonight, they're powerful, terrifying, deadly. Most people run away from tornadoes, but this man runs after them.

WARREN FAIDLEY, Photographer: Dave's the "Terminator" of storm chasing.

SAWYER: *(voice-over)* Tonight, the storm chaser, on the road in search of the perfect tornado.

ANNOUNCER: From ABC News, Forrest Sawyer, Sheila MacVicar, John Hockenberry, Michael McQueen, Jay Schadler, and John McKenzie— this is Day One.

(Commercial break)

Be Prepared

ANNOUNCER: Day One, with Forrest Sawyer, continues.

FORREST SAWYER: We begin tonight with a story that could touch nearly every family in America and anyone who's ever put on a Scout uniform. First, listen to this letter the Boy Scouts of America wrote to us. It says, "The Boy Scouts has been the catalyst for much of the awareness and discussion of child abuse that has emerged in recent years." It is true, the Boy Scouts have made an effort to educate Scouts and their parents about the dangers of child abuse, but that's not the whole truth. A four-month Day One investigation has revealed that, for most of this century, the organization has kept secret files on hundreds of troop leaders accused of being pedophiles, child molesters. But even though they knew they had this problem, the Boy Scouts chose to do little about it. In fact, they kept the truth from families who put their trust in the scouting tradition.

(Boy Scouts promotional video)

HENRY FONDA: When you help start a scout troop, there's no guarantee one of the boys grow up to be an actor.

ASTRONAUT: Go to the moon, twice.

HENRY AARON: Hit 755 home runs.

Pres. GERALD FORD: Grow up to be president But you never know.

SAWYER: *(voice-over)* It's part of the American dream, to be a Boy Scout, to swear to be physically strong and morally straight, to learn to stand up for what you believe in. Every year, four million boys share the dream that for a few of them, it will become a nightmare, the Boy Scouts of America is a target for pedophiles.

KEN LANNING, FBI Pedophile Expert: I think the Boy Scouts is one of many organizations, in my opinion, which is potentially highly vulnerable. There is no human being on the face of the earth easier to seduce than an adolescent boy in his early teens. They have an ease of sexual arousal, they're curious, they're exploring their sexuality. One of the things that you're always working towards is getting the child to have to change clothing or spend the night with you. The Boy Scouts give you that opportunity, you take overnight hikes. Another thing about the Boy Scouts is that it provides a bonding mechanism which these offenders always need.

SAWYER: *(voice-over)* The Boy Scouts of America agree child molestation is a problem, but they say they only became aware of it in 1985, after one alleged case made national headlines.

(interviewing) Were there no significant problems inside the Boy Scouts before 1985?

BLAKE LEWIS, Boy Scouts Spokesman: Not that we're aware of, no.

SAWYER: None at all?

Mr. LEWIS: Not that we're aware of.

SAWYER: In fact, the Boy Scouts' own confidential records, obtained by Day One, show they've been aware of the significant problem inside their own organization for decades. The secret files, from the years 1971 to 1991, show the Boy Scouts banned over 1,800 people for abuse or suspected abuse. The files show that abuse has served for years without being detected, and when they were caught, the Scouts engaged in coverups to keep their image clean.

(voice-over) Shortly after its founding in 1910, the

Boy Scouts of American began keeping the confidential files. They were to serve as the internal clearing house of people who should not be allowed in. Each new volunteer's name was to be checked against the files, and anyone dismissed was to be listed to prevent him from rejoining. Our investigation found this system was far from failsafe.

"CARL B": I'm very thrilled about the fact that, throughout my scouting, 14 years of scouting, there were 18 Eagles, young men that made Eagle while I was either assistant scoutmaster or scoutmaster.

SAWYER: *(voice-over)* Carl B., a convicted pedophile who agreed to talk to us if we didn't use his last name. Carl's serving 30 years in a Virginia prison. Before that, he served in five different scout troops. If his first troop in Wilmington, Delaware had checked Carl's Navy record, they may have learned he was court-martialed for molesting young boys.

[Graphic: "General court-martial ... indecent liberties..."]

SAWYER: You had been released from the Navy for sexual abuse.

"CARL B": Yes.

SAWYER: Did you worry that when you applied to the Boy Scouts that the Boy Scouts might put those two together, might come up with that fact?

"CARL B": I don't think it occurred to me. It turned out not to be a problem.

SAWYER: They didn't check?

"CARL B": They didn't check.

SAWYER: *(voice-over)* Over the course of a year, Carl molested several boys. When one of them finally told his school principal, Carl was allowed to quietly leave town.

FORMER DELAWARE SCOUT: He liked little boys. I was a little boy, and he did whatever he had to to make that work. He's a sick dude.

SAWYER: Were you afraid of prosecution?

"CARL B": No, at the time I wasn't. It was kind of put under the rug, nobody dealt with the issue.

SAWYER: *(voice-over)* And nobody dealt with the trauma suffered by the children either.

FORMER DELAWARE SCOUT: It hurt me. It hurt me bad. I mean, I have three children myself and I wouldn't even have them in the Boy Scouts.

SAWYER: If there is an alleged instance of child abuse reported, is it true that the Boy Scouts of America always contact law enforcement agencies?

Mr. LEWIS: Yes. That's— that's the practice.

SAWYER: In every single instance this has been true?

Mr. LEWIS: To the best of my knowledge, yes.

SAWYER: So you know of no single instance anywhere, a Boy Scouts leader has simply left the troop, gone to another place, sometimes without the parents even being told?

Mr. LEWIS: To the best of my knowledge, any time we've become aware of a situation, it's going to be reported. It's going to be reported to law enforcement officials. That individual's registration is going to be discontinued and they're going to be placed into the ineligible volunteer file.

SAWYER: *(voice-over)* In fact, Carl B. was never reported to the police and his name was not added to the national headquarters' confidential files, so Carl was able to move through three other Boy Scout troops, from Connecticut to Rhode Island, always appearing to be the perfect scoutmaster.

PARENT OF FORMER SCOUT: I would say not only was he charismatic and a good scout leader, he put this kind of dedication into anything that he did.

Mr. LANNING: People think of child molesters as being evil, horrible people, and this guy cuts his grass, and works hard on the job, and he goes to church on Sunday. He seemingly doesn't have any of these other traits and characteristics that we would identify with somebody as evil as a child molester.

SAWYER: *(voice-over)* By 1980, Carl had a home on the water in Barrington, Rhode Island. He likes to take his Scouts out on his boat. The boys' parents had grown to trust him.

PARENT OF FORMER SCOUT: The night before the incident with my son, actually Carl came to my house, sat at my table, ate my chicken, in my living room played my organ, sang with my children, and then the next day attempted to molest them.

FORMER RHODE ISLAND SCOUT: My first uneasy feeling with him is when we went swimming and he wanted everybody to skinny-dip, and I wasn't— I didn't— I wasn't into that at all. And everybody just took off their bathing suits and went swimming, and I just walked off.

SAWYER: *(voice-over)* Months later, Carl took a more direct approach. When he was rejected, he warned the boy not to talk.

FORMER RHODE ISLAND SCOUT: He said, "Don't mention this to anyone. No one will believe you." It's very intimidating.

SAWYER: *(voice-over)* But he did tell his father, who called the police and the Boy Scout troop committee.

PARENT OF FORMER SCOUT: The committee thought that Carl was the best thing to come to town since— since ice cream, and I came before the committee and it was like I was on trial. We were considered wrong in this.

SAWYER: You must have been a heck of a scout leader, because you were charged with eight counts of sexual abuse of children and the troop committee, your troop committee, rallied around you 100 percent, didn't believe a word of it.

"CARL B": That's true.

SAWYER: And they were convinced you were being railroaded.

"CARL B": Yes.

SAWYER: Until you pleaded guilty.

"CARL B": Yes.

SAWYER: *(voice-over)* Carl was sentenced to five years' probation, and he moved out of Rhode Island, tried to stay away from boys and tried therapy, but a few years later he was back, applying to be a Boy Sc

leader in Reston, Virginia.

(interviewing) You have left a trail of suspected and admitted child abuse. You have been convicted of child abuse. And you applied to a Boy Scout troop.

"CARL B": Yes. I fill out the application in Reston. I filled it in absolutely honestly. I listed Rhode Island, I listed Connecticut. In fact, I might have even listed Delaware.

SAWYER: You were pretty convinced that they'd catch up with you at the outset.

"CARL B": Yes. And when it didn't happen, I figured just the reverse, is that they had looked and said, "He went through therapy, it's not a problem, it's not going to happen again."

SAWYER: You're lying to yourself, you're doing all sorts of things, but really, you knew.

"CARL B": Try to understand. The allure of the scouting experience, of doing all of the positive things that I had done in the past for young people, was awfully, awfully powerful. I knew that I had this touch of being able to motivate people and get them to help their children, and get involved with the troop, and have the young men grow and mature.

SAWYER: Didn't you remember what you did to those people in Rhode Island?

"CARL B": I— you've got to remember that I did not think of that. I couldn't. If I started to think of that, it's painful, it hurts inside, it confirms that I'm terrible. You stuff the feelings away, you rationalize them away and say, "It's not going to happen again."

SAWYER: *(voice-over)* But it did happen again. In 1985, Carl was convicted on five counts of sexually abusing boys in his Reston scout troop, and he began serving his prison term.

The Boy Scouts' confidential files show Carl is not alone. Other convicted child molesters have managed to become scout leaders. Eric Patrick Avent *(spl)*: convicted of sexual abuse in 1979, he became a scoutmaster in 1984. Richard Smith: a conviction for sexual abuse in 1968, a scoutmaster in 1981; in 1983, the troop kicked him out for molesting boys, but the Boy Scouts of America never turned him in to the police. He was finally arrested in 1991 for molesting his foster child. Douglas Birney *(spl)*: convicted in 1975 of sexually abusing a 15-year-old Explorer Scout in Massachusetts; by 1988 he was with another troop in Pennsylvania, and two years later, another conviction. Thomas Hacker of Illinois: charged with abusing scouts in his troop in 1961, but he didn't go into the file until 1970 and, 15 years later, he tried again to become a scout leader and a routine check failed to turn up his name and he got back in. Hacker was finally arrested in 1988 and, by that time, police concluded he had abused more than 100 children.

(on camera) Experts tell us child molesters often rationalize their behavior, convincing themselves that the children are partly responsible for what's happening. What is more unusual is that attorneys for the Boy Scouts have used the same argument when victims decide to sue, and since 1981 the Boy Scouts have been sued over 50 times, with the organization agreeing to pay out more than $15 million in damages to victims of sexual abuse.

(interviewing) In the court cases where the Boy Scouts of America have been brought in as defendants, attorneys have blamed boys for keeping their abuse by scout leaders secret, in one case saying a boy should be held partly responsible for not reporting the abuse sooner, in another case asking a boy on whether he enjoyed oral sex with an adult. Why were the boys treated this way by your own attorneys?

Mr. LEWIS: I've heard that language from plaintiffs' attorneys, yes.

SAWYER: Is it not true?

Mr. LEWIS: I don't— I can't say that that's true or not.

SAWYER: Asking a boy if he enjoyed oral sex with an adult?

Mr. LEWIS: I certainly have not seen any of that.

SAWYER: Would it surprise you to know that your own attorneys did it?

Mr. LEWIS: I can't speak to what has been said in the courtroom. That's not my area of expertise.

SAWYER: Would it surprise you?

Mr. LEWIS: I guess my feeling is yes, it would be a surprise.

SAWYER: *(voice-over)* In 1988 the Boy Scouts of America initiated three policy changes. Their *Boy Scout Handbook* now comes with a new pamphlet, addressed to parents, that discusses the problem of sexual abuse. They also produced two videos for Boy Scouts and Cub Scouts. The boys do hear about the dangers of sexual abuse, but scout leaders are never depicted as abusers.

ACTOR: *["A Time to Tell"]* I know the score. At least, I thought I did, then something weird happened to me.

SAWYER: *(voice-over)* Also in 1988 the Boy Scouts altered their application form. It now includes the question, "Have you ever been charged with child neglect or abuse?" The files clearly demonstrate an obvious fact: applicants sometimes lie.

(interviewing) Is there a check on that statement?

Mr. LEWIS: Again, it's difficult to check that. Rules vary from state to state. There are actually some places where it is illegal to get an investigation on a person's criminal background.

SAWYER: But why don't you require it, where you can require it?

Mr. LEWIS: I don't know that I can say why a group does or does not.

SAWYER: In other words, the national organization of Boy Scouts of America does not press its locals to have mandatory background checks? It allows the locals to make those decisions?

Mr. LEWIS: It can't be required across the board.

SAWYER: *(voice-over)* The Boy Scouts of America is also trying to train its troop leaders with another video that lays down specific guidelines, what behavior is inappropriate and how to recognize potential abusers.

2nd ACTOR: *(Boy Scout training video)* Additional information about child molesters is included in your program packets.

SAWYER: *(voice-over)* But for all their educational efforts, the national headquarters has established no system of making sure troop leaders actually go through training. Even though by 1988 the Boy Scouts had an addition to their *Handbook*, educational videos for the boys, guidelines for volunteers and employees, and a new application, the confidential files show that pedophiles have still managed to become scout leaders. Richard Stinger, suspended from scouting in the early '70s, allowed back in on probation— not until 1989 was Stinger arrested and convicted of sexually abusing scouts in his charge. James Burton and David Reed *(sp!)*, convicted of child molestation in California— they got around the rule requiring two adult leaders at all activities by forming their own scout troop. The confidential files show that, over a 10-month period in 1988, they molested more than 30 children. And Rodney Almont *(sp!)*, convicted last year of four counts of child sexual abuse— just months before his arrest, he was giving interviews about his camp program.

RODNEY ALMONT: I think, for the most part, they're left with a lot of memories. We hope that they're good memories.

SAWYER: *(voice-over)* Despite the problems highlighted by the confidential files, the Boy Scouts have been reluctant even to admit that documents exist.

DON WOLF *(sp!)*: We were aware of the fact that Boy Scouts had internally their own list, blacklist, if you will, of troubled individuals who had volunteered for Boy Scouts service.

SAWYER: *(voice-over)* Don Wolf of Big Brothers/Big Sisters was convinced the extensive Boy Scout files could help his organization fight the problem of child abuse.

Mr. WOLF: And we wanted to have access to that list, and assured them that we would likewise keep a list and share that information with them. They said, "We don't have that list that you think we have."

SAWYER: They were lying.

Mr. WOLF: Well, they certainly wouldn't admit that they had a list, and we believed them to have a list, yes.

SAWYER: *(voice-over)* By 1979, Big Brothers/Big Sisters had already acknowledged their organization was a target for abusers. Without the Boy Scouts' help they studied their own cases and ended up making their application process one of the toughest in the nation. It includes police checks, a training program, and a probation period. Wolf says the Boy Scouts' approach didn't work.

Mr. WOLF: They tried to hide it, and that was a bigger part of the problem. They didn't recognize that it was a part of the problem, and they didn't seek to become a part of the solution.

SAWYER: Your critics say, to put it bluntly, that you were dragged kicking and screaming into dealing with the child abuse problem, and that what you wanted to do, until you were forced to do it, was just hush it up.

Mr. LEWIS: There are people that want a silver bullet answer to everything, and we're not going to please people who expect an absolute silver bullet solution to this problem.

SAWYER: *(voice-over)* The confidential files show the Boy Scouts' answer to the problem often came down to public relations damage control. One scoutmaster was secretly put on probation on the condition that he not touch boys' genitals *("...absolutely NO TOUCHING of any part of the body...")*. Parents were talked out of pressing charges against one accused scout leader *("asked them not to notify the police...")*. And in the case of another accused man, a national headquarters official wrote, "I hope the news media maintains its silence relating to his involvement with Scouting."

Day One's review of hundreds of Boy Scout files shows an average of 99 reports of child abuse in the organization every year.

(interviewing) Isn't that a problem?

Mr. LEWIS: It's very important to us that one case is one too many. Ninety-nine out of 600, 700, 800 local councils, I don't think that you can say that's a problem.

SAWYER: You can't say that's a problem?

Mr. LEWIS: Again, one case is one too many.

SAWYER: Well, then, you've got almost a hundred, on average, a year. That's a 100 times worse a problem.

Mr. LEWIS: And you work forward developing and enhancing programs as you go.

SAWYER: The confidential files show the Boy Scouts are decades late in reacting to the problem, and even today the Boy Scouts do not admit they are a primary target of abusers. In fact, they call their organization a leader in sex abuse prevention. The abusers themselves paint a very different picture.

(interviewing) If you were back out there today and you weren't getting help, you think you could find a Boy Scout troop?

"CARL B": Oh, I— it's— I'm sure that the potential is there, surely. Somebody is— somebody is needy enough there's somebody that wants a good leader. Yes, that's a possibility, of course it is.

SAWYER: And there are other Carls out there.

"CARL B": Yes, unfortunately, there are.

SAWYER: As a matter of fact, in the past month at least five more scout leaders in five different states were sentenced for sexually abusing the children in their care. As for the Boy Scouts, they told us just today they have a new child protection programs in the works.

ANNOUNCER: Still to come on Day One—

RICK TESSIER: More and more people can't afford to hire that lawyer that costs $10,000, $50,000, $100,000.

ANNOUNCER: Can you get your day in court with an overwhelmed, overworked court-appointed attorney?

Judge CALVIN JOHNSON: Justice is not equal had in this room by all, no, it's not.

ANNOUNCER: And—

(home video of tornado)

WOMAN: Time to go inside.

BOSTON PUBLIC LIBRARY
3 9999 05983 031 3

ISBN 0-16-046185-5